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TEN YEARS

OF

THE CHURCH OF SCOTLAND

PRINTED BY WILLIAM BLACKWOOD AND SONS, EDINBURGH.

TEN YEARS
OF
THE CHURCH OF SCOTLAND
FROM 1833 TO 1843

WITH HISTORICAL RETROSPECT FROM 1560

BY
JAMES BRYCE, D.D.

VOL. II.

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TEN YEARS

OF

THE CHURCH OF SCOTLAND

CHAPTER I.

ASSEMBLY 1840 :—DEBATE ON THE BILL INTRODUCED INTO THE HOUSE OF LORDS BY LORD ABERDEEN—ITS REJECTION BY THE GENERAL ASSEMBLY.

WHEN the judicial storm, which the Auchterarder and Strathbogie questions had raised, was gathering around the Church of Scotland, disturbing her peace, and endangering her usefulness, the legislative haven had naturally been thought of, as the only harbour of refuge from the tempest. When the laws, as they existed, or had come to be interpreted, were found to be opposed to those claims of spiritual jurisdiction, which the church held herself to possess, and had resolved by this time to maintain at whatever sacrifice, it had been determined to obtain, if possible, a new civil statute by which this jurisdiction might be acknowledged and secured; and the ground had even already been taken up, that if this acknowledgment and security could not be reached, the only alternative would be the relinquishment of all connexion with the State. How far the very act of applying to the civil magistrate to grant the measure, now

1.
Position of the
church at Assem-
bly 1840.

held as necessary, was not in itself an abandonment of the high ground of spiritual independence really set forth, was a question which had been kept very much out of sight; or if at any time it presented itself in the argument so prominently that it could not be evaded, the difficulty was held as surmounted, when the church proclaimed, that she did not apply to the legislature to *grant* her the privileges and immunities denied to her by its judicial organs, but to *ratify* these privileges as belonging to her by what was called *inherent* and *intrinsic* right; and to place her courts, in their exercise, beyond the cognisance and control of the civil tribunals. Statesmen, like the Earl of Aberdeen, who had now undertaken to assist the church in the emergency that had arisen, were more concerned with the practical, than the theoretical phasis of the question; and whether, in what he was now to call upon the legislature to sanction, the State would be *granting* or merely *ratifying*, does not appear, from his correspondence with Dr Chalmers, to have been regarded by this truly patriotic nobleman, as a matter requiring very grave or detailed discussion. He had drawn up his bill, as has been seen, not with a regard to the sources of ecclesiastical authority, but with the avowed intention of providing for the rights of all parties concerned in the settlement of a vacant parish. Such was the nature and object of the measure, which was at length brought before the Assembly 1840, in the Report of the Non-intrusion committee being taken up. This report was first read, setting forth the communications already noticed, which the committee had held with her Majesty's government; and, at the same time, laying on the table the bill, which the Earl of Aberdeen had introduced into the House of Lords, after Lord Melbourne had declined bringing the Scottish church question before parliament.

The debate on this occasion is entitled to particular attention, as

2. developing the extent of the spiritual power and jurisdiction, which the majority in the general assembly were now bent on obtaining. It was opened by Dr Chalmers, who alleged, at the outset, that the Spiritual Independence of the church was a doctrine on which she was all but unanimous, however great might be the differences of

Important debate
—opened by Dr
Chalmers.

opinion on the point of non-intrusion and the veto law ; and this independence in the matter of admitting ministers to pastoral charges he argued from what, he maintained, were the unquestioned powers of the church over her members seeking to participate in ordinances.* He contended, that although the most obvious civil interest—an annuity, for example—might be founded on the condition, that the possessor shall be a communicant, and thus a civil right mixed up with a spiritual privilege, it would not follow, that the secular courts could be let in to enforce admission to the holy table. From this incapacity to come in, in regard to partakers of spiritual privileges, Dr Chalmers deduced a similar incapacity in respect to the dispensers of these privileges. He maintained, that if the church can say, beyond all civil control, whom she is to admit or refuse to the participation of ordinances, she must, *a fortiori*, have the same unlimited control in saying whom she is to receive or refuse as the dispensers of these ordinances. He was well aware, he said, how difficult it was to bring home the doctrine of the spiritual independence of the church to his countrymen in England ; and he dwelt at some length in exposing what he termed the utter ignorance and want of sympathy felt by Englishmen upon the Scottish church question. This ignorance, he argued, was the less wonderful, when the very different bases on which the Churches of Scotland and England rested, were considered. The motto of the Church of England was, according to his understanding, that “ the king is the head of the church ;” while that of the Church of Scotland proclaims, that “ the Lord Jesus Christ is the head of the church ;” and hence, he believed, arose the very different sense and estimate put by these national establishments upon the spiritual independence of the church. Passing from the question of spiritual independence, he next took up the narrower, and, so far as the subject before the assembly was concerned, the more appropriate point of non-intrusion. He assumed, that all were agreed in receiving as a principle fundamental in the policy of the church of Scotland, that “ no man shall be intruded upon a parish contrary to the will of the congregation ;” and to this Dr Chalmers received a ready and

* Proceedings of the General Assembly 1840.—MACGREGOR.

general response from both sides of the house—although many from whom this response came, would acknowledge neither a right divine in the people to choose their own minister, nor a right, either human or divine, to reject a presentee without reasons, judicially cognosced and determined, according to the provisions of acknowledged and existing statutes. He avowed himself much disposed towards the state of matters as they existed in 1690, when the initiative was with the heritors and elders of the parish; but, obliged to meet the hypothesis, that the initiative was to remain in the hands in which it is lodged under the Act of Queen Anne 1711, Dr Chalmers next declared that his *optimum maximum* of a mode of giving effect to the “fundamental principle,” would be, to bestow such a *liberum arbitrium* on the church courts, as should place the settlement of the minister distinctly and entirely at the will of the presbytery, and beyond the power of the civil courts to interfere with it, on the ground of civil rights being trenched upon, or affected by its decisions. But as this mode of settling the question was equally excluded, as was the Veto or the Call, from Lord Aberdeen’s bill, he felt it unnecessary to expatiate on its advantages as a measure, acknowledging the inherent and intrinsic powers of the church of Christ, and recognising a right of legislation in the ecclesiastical courts, adequate to accommodate itself to the wants and exigencies of the church, as they might arise. The second measure, therefore, which he was willing to adopt, was an act attaching the same immunity from the control of the civil courts to any specific law of settlement that might be enacted; but as this also had been repudiated by the bill then before the assembly, there remained as little occasion to enter into its details. The only door which the bill appeared—and only appeared—to leave open, for giving effect to the non-intrusion principle, and paying respect to the spiritual independence of the church, was that of securing immunity to the church in the possession of her endowments, and protection from all interference whatever with her actings by the civil courts, when, in the exercise of her judicial powers, she should give effect, in any instance, to the views, for which she surrendered the right of legislating by a general law, calculated to meet every case. Although

this door, narrow as it was regarded by him, had also been shut by the bill, he very honestly confessed, that he was ready to have adopted a measure founded on this basis;—a statement demanded from him the more explicitly, that many who went on other points along with him, regarded such a scheme as a surrender of both the inherent powers of the church, and the principle of non-intrusion. Such a settlement of the question, however—had it been embraced by the bill—would, he contended, have recognised the right of the church to arrest the presentee on the way to the benefice, on any principle which might seem good to her; would enable her to do so, in respect of the moral barrier which the general dislike of a congregation would raise against his usefulness;—in other words, would entitle her to give effect to the non-intrusion principle, after the very form and fashion of the Veto Act, although without a general or positive law requiring or empowering her so to proceed. He maintained that, under such a measure, there would be no surrender by the church of the legislative rights which she possessed, even should she agree to forfeit her endowments, on passing any law in the matter of settlement; and, on the State consenting that the endowments should be maintained, although, in the free exercise of the church's judicial powers, she should reject a presentee for any reason that might seem good unto her, he contended that there would be no receiving from the State any powers or privileges-judicial, which the church did not previously, and of inherent right, possess. Give her the power, he said, judicially to prevent the intruding of a minister on a parish, contrary to the honest and religious will of the people, and he cared less as to her being empowered legislatively to provide for the same object. He confessed, that had he obtained a measure bestowing on the church both the legislative and judicial powers, he would have put the former in abeyance, until it had been seen how far, by a series of righteous judicial decisions, she might not have created a code of common law, rendering unnecessary the putting forth at all of her legislative powers. He maintained, that it was by a series of unrighteous decisions, and by a subservient surrender of their own inherent rights, that the church courts had thrown into the hands of patrons

that unrestricted supremacy in the exercise of their rights, which had brought so many evils on the church of Scotland; while, on the other hand, he warmly deprecated the policy, that would refuse a settlement of the question, on the ground that power was not given to the church to enact her own laws for the maintenance of non-intrusion, when the right was acknowledged of giving effect to this principle judicially in every instance, as she should see fit.

After laying down these general principles, as guides in the matter of spiritual independence and non-intrusion, Dr Chalmers proceeded to notice the Bill before the Assembly, as it regarded or violated these rules by its provisions. He was brief upon this part of the subject, leaving it to others, who were to follow him in the debate; while he expatiated warmly, and in terms of bitter disappointment, on the result of all his attempts to bring about a settlement of the church question, as this result was found in the measure before the house. The church, he said, had sought relief from a hardship imposed upon her by a sentence of the Court of Session; which hardship consisted in the temporalities being withheld, when the church, in the exercise of her inherent powers, had rejected a presentee for reasons that seemed good to her, and with which no other court had a right to interfere: and this application was replied to by offering her a measure, prohibiting her from carrying into effect, in any instance, what she had framed a law but lately for compelling her own judicatories to carry into execution in all cases—namely, to reject the nominee of the patron in respect to the continued opposition of the people, although without reasons assigned. He maintained, however, that giving effect to the dissent of the people, on reasons shown, was not the substance or principle of the veto law; and a power to reject upon reasons had at all times resided in the church courts. But, in leaving untouched, as Lord Aberdeen had done, the decisions of the Court of Session complained of, his lordship had distinctly thrown overboard the right of the church in the exercise of her *liberum arbitrium*, to reject on the mere fact of popular dissent. Dr Chalmers concluded a speech, remarkable for the fervour of its eloquence, by submitting to the General Assembly the following resolutions:—

“The General Assembly having taken under their consideration
 3. the Report of the committee of last General Assem-
 Resolutions moved by Dr Chalmers. bly, on the subject of non-intrusion—while they
 deeply lament the existing collision between the civil and the
 ecclesiastical courts, and earnestly desire to afford every facility
 for bringing it with the least possible delay to a termination in
 harmony with the fundamental principles and practical affairs of
 this church—Resolve,

I. “That they will continue to assert and maintain the exclusive
 jurisdiction of this church in all spiritual matters; and in particular,
 while they recognise the civil power as supreme in all questions
 touching the temporalities of the establishment, they cannot regard
 that supremacy as investing the civil power with any control over
 the church courts, in determining the qualifications and conditions
 they may require, in conferring the ministerial office, and consti-
 tuting the pastoral relation, nor in detracting in any respect from
 the full authority of the church over her own office-bearers.

II. “The General Assembly resolve, that they will continue to
 assert and maintain the great and fundamental principle of non-
 intrusion, while, at the same time, they are willing, as they have
 hitherto been, to consider any modification which may be proposed,
 in regard to the provisions and regulations for carrying the prin-
 ciple into effect, so as to bring the law of the church into con-
 formity with any law, regarding temporalities, which shall be in
 accordance with that fundamental principle.

III. “The General Assembly having considered the bill intituled
 ‘An Act to remove doubts respecting the admission of Ministers
 into benefices in that part of the United Kingdom called Scot-
 land,’ recently introduced into the House of Lords—resolve,
 That while it makes no adequate provision either for securing the
 exclusive jurisdiction of the church in matters spiritual, or for
 enabling the church to carry into effect the principle of non-intru-
 sion according to any specific law, the bill does not even leave the
 church courts at liberty, in the exercise of their judicial functions,
 and on their own responsibility, to give effect to their own solemn
 convictions of duty, in refusing to intrude presentees on reclaim-
 ing congregations; nor does it protect from civil coercion and con-

trol, when, in any particular case, they shall do so; and therefore, inasmuch as this bill is inconsistent with the principles of the church, and threatens, if passed into a law in its present form, to produce effects which may be fatal to the church as a national establishment, the General Assembly resolve, that they cannot acquiesce in this bill, unless it be so altered as to be in conformity with the principles which have now been expressed; and that it is the duty of this church to use every effort to prevent its obtaining the sanction of the legislature.

IV. "The General Assembly approve, generally, of the proceedings appointed by last General Assembly, in regard to the measures proposed or entertained by them for the settlement of the present question, and appoint a committee, with instructions, to watch over the progress of any bill relative to this subject; and with power to the committee, if they see cause, to bring before the legislature, in any competent way, the draft of such a measure as may appear to them best suited for the purpose."

It formed one of the staple arguments of Dr Chalmers in this remarkable debate, as in all his writings on the subject, that, in ecclesiastical matters, "the civil courts may intromit with nothing but the temporalities of the establishment." But it is not easy to see, how this doctrine is to be reconciled with what is laid down in the Confession of Faith, in regard to the duty of the civil magistrate towards the church. It is declared in this particular chapter of the statute-law of Scotland, that the civil magistrate "hath authority, and it is his duty to take order, that unity and peace be preserved in the church; that the truth of God be kept pure and entire; that all blasphemies and heresies be suppressed; all corruptions and abuses in worship and discipline prevented or reformed; and all the ordinances of God duly settled, administered, and observed." In discharging this duty, the civil magistrate can have no difficulty, so long as he can interpret the meaning of language employed by himself. It is not, however, to be alleged that he is left to his own views, as these may arise of what orthodoxy or heresy may be. That is laid down to him in the rule, which has been the joint result of his own convictions of the truth, as revealed

^{4.}
Remarks on Dr
Chalmers' Speech.

in scripture, and those of the church. Neither of the parties under the union could have stipulated, without the most manifest absurdity, that their future convictions of truth, as revealed, were to warrant a departure on their part from the rule agreed on, when a similar change of sentiment was not come to on the other side—a case in which, in fact, another and a new compact would be entered into. Under this provision, the civil magistrate has clearly a jurisdiction beyond the mere temporalities of the church, and within the province to which, without a manifest perversion of language, it is impossible to refuse the title of ecclesiastical. To quibble, as has been done, on the civil magistrate being commanded to “*take*,” not to *give* order; and to infer from thence his inferiority to the ecclesiastical in the matters spoken of, appears altogether unworthy, and requires what cannot, on any fair construction of the provision, be demanded, that “order” is equivalent to “command” or “direction.” It is evident that, had this been the meaning of the word, the civil magistrate would have received from the statute, not an authority, but an admonition. Nor was Dr Chalmers’ argument founded on the church’s power, in admitting to the participation of holy ordinances, any way more happy. It did not meet the position in which the decisions of the civil courts had placed the ecclesiastical, or in which the bill of Lord Aberdeen proposed to leave them. The House of Lords had determined that, by law, the individual seeking admission to the benefice and cure, to which he had been legally presented, must be received on trials by the presbytery, notwithstanding the arbitrary dissents of the parishioners; and the parallel would have been that of a parishioner, seeking from his minister and kirk-session to be taken on trials, as to his fitness to partake in the communion, and this being refused to him, on the ground that his fellow-parishioners dissented from his obtaining this right or privilege of being so taken—the church having passed a law empowering them to do so, and rendering it imperative on the minister and kirk-session to give effect to the enactment. With the question,—how far every parishioner has not a right, which he may enforce at common law, to be taken on trials as to his fitness to participate in ordinances, Dr Chalmers did not meddle; and, consequently, left the question

of the spiritual independence of the church, and its invasion by either the decrees of the civil courts, or by legislative measures, such as the bill of Lord Aberdeen, just as he found it; so far, at least, as the illustration which he had brought to it was concerned. The independence of the church, as it rests on scripture and statute, is violated when the secular arm steps in to compel her to bestow the ordinances of religion on those whom, after trial, she has solemnly pronounced unfit to receive them; and, in like manner, would this independence be outraged, when, after solemn judgment that a presentee is not qualified, the secular arm should still force him into the ministry. But, as the House of Lords afterwards found in the Auchterarder case, that a presbytery is liable in damages for refusing to take a presentee on trials, it cannot be doubted that, by the same rule, the law would find a minister and kirk-session equally liable, who refused to take on trials a parishioner seeking to be admitted to ordinances. The very end and purpose for which a national church is established and maintained, is to afford the ordinances of religion to the subjects of the State—to all, without exception, who, under the law and constitution of the church of Scotland, are qualified, and desirous to receive the same,—the question of qualification being one, in the very nature of the transaction, falling under the province of those who are to dispense these ordinances, and by the statute law of Scotland specially placed under their control. To contend, therefore, that the dispensers of the ordinances within the Church of the State are to have power, when they see fit, to refuse entering on the question of qualification, on application made for their services, is, on the very face of it, to defeat the end and object of the State, and to render the establishment of a national church altogether nugatory. Such a solecism in legislation, as a duty laid by parliament on any public body for the benefit of other parties, without the right or power of parliament, through its judicial organs, to see that this duty is properly performed, is not to be entertained. The same decision must have afterwards satisfied Dr Chalmers, how much he was mistaken, in holding that the only hardship, as he esteemed it, consequent on carrying the veto-law into effect, was the withholding of the temporalities from the minister ordained by the church. This decision established it

as law, that a presbytery so acting was liable in damages to the presentee ; and in the case of Lethendy and Kinloch, these damages were given and measured by the value of the living, from which the presentee had been, perhaps, excluded, and by the injury done generally to his character by the judgment ; while the right was still reserved to him to apply anew to the civil courts, if the church persisted in refusing to take him on trials, because of the illegal dissent of the congregation. The question in this case to which, in the course of his speech, Dr Chalmers adverted, as a striking example of invasion by the civil courts, simply regarded the right of the presentee to be taken on trials, that, if found qualified, he might enjoy the cure and benefice to which he had been nominated. That question was *sub judice* in the proper court when the presbytery of Dunkeld saw fit to interfere, and to bestow the cure, if not the benefice, on another party, and this in the face of an interdict legally served upon them. They were, therefore, in fact, the invaders of the independence of the Court of Session ; and the course which they so unwisely pursued, under the “all but unanimous advice of the commission,” subjected them in the end to the painful predicament of being publicly reprimanded at its bar. But not only had the commission, in this case, disobeyed the legal inhibition of the Court of Session, but the church had taken upon herself, by a sort of side-wind procedure, to dispense with the Act of Queen Anne 1711, in ordering the induction of the second presentee to Lethendy and Kinloch to proceed upon the Call which he had received from the people of the parish, and not upon the presentation which he had obtained from the patron—in this instance the crown. This procedure was manifestly founded on the most erroneous doctrine, that the forming of the pastoral relation between the minister and the flock within the Establishment is an ecclesiastical or spiritual act, in regard to which the civil courts have no jurisdiction. According to this doctrine, which was also afterwards followed out practically in the case of Marnoch, the church courts may bestow the pastoral relation in all the parishes of Scotland on individuals who have received *calls at large* from the people—the patron at the same time giving the benefices and their temporalities, by virtue of the right of presentation, to other and

different persons! It so happened, indeed, that in the cases of Lethendy and Marnoch, the persons called by the people, and the persons presented by the patron, were one and the same; but the distinction at this time drawn by Dr Chalmers, and upon which the assembly practically proceeded, between the ecclesiastical and civil provinces, manifestly went all the length now pointed out, and was so obviously a disruption of the Church from the State, that nothing but party zeal and prejudice could have prevented such men as Dr Chalmers from perceiving it. When, indeed, this ground was once occupied, it presented a field of argument well adapted for displaying the singular ingenuity for which this eminent churchman was distinguished; and he was afterwards found revelling in it, in all that exuberance and richness of illustration, which he could so well bring to any subject, until he had conducted others, as well as himself, to the reception of fallacies, which a more sober survey would have taught them to reject. In his allusion to the Church of England, Dr Chalmers was as unfortunate as he was unfair, in his argument. Every one felt that no church, calling itself Christian, could deny the Headship of Christ; and that all the ardour and eloquence which, at this particular part of his speech, Dr Chalmers was pouring forth, were misplaced and uncalled for. In avowing himself well disposed towards the state of matters as they existed in 1690, when the initiative in the settlement of a minister was with the heritors and elders, Dr Chalmers took up ground not easily reconcilable with an advocacy of the Veto law of 1834; inasmuch as, if the latter does no more than uphold the fundamental principle that "no man is to be intruded into a parish contrary to the will of the congregation," the former must have been destructive of this principle, as it allows a settlement to take place, where the "will" of the people has been most strongly and universally expressed against it, provided the objectors are unable to satisfy the presbytery, that they have withheld their consent for good and valid reasons. The ground on which Dr Chalmers argued that the veto may be dispensed with, where the initiative is in the hands pointed out by the Act 1690, must be regarded as very weak in principle; as, under this act, it may still be the patronage of two or three, or half a dozen, instead of one.

This regard for the Revolution-settlement Dr Chalmers had more than once expressed, in his correspondence with Lord Aberdeen. When he gave utterance to it on this occasion, in the General Assembly, it was felt by many of his friends that his non-intrusion principles hung but loosely upon him. It was, indeed, evident throughout the whole speech of the learned and reverend Professor of Divinity, that he had not yet surrendered himself to the extreme doctrines, which the non-intrusion committee had taken up, and which they had pledged themselves not to abandon.

Sir George Clerk, Baronet, followed Dr Chalmers in addressing the assembly. He was actuated, he said, by as deep a conviction of the inherent independence of the church, and as determined a resolution to stand by this independence, should it be invaded from any quarter, as Dr Chalmers himself could entertain. He did not, however, see that there was any necessity to unfurl the banner of "Christ's crown and covenant;" while he was willing to admit, that when questions arose touching the church of Scotland, it was difficult to render them intelligible to Englishmen. He imputed the ignorance of British statesmen on such questions as had arisen, to the happy infrequency of the church of Scotland's appearance on the parliamentary arena; and he deeply lamented that circumstances should have occurred to drive her to the legislature of the State for a settlement, which it had been infinitely better could her own have accomplished. The jealousy of the church, at all times, of the civil power, he could fully justify; and he only sought, that while she guarded her own rights and privileges, she took care not to invade the province of others. Although the passing of her veto law had brought her avowedly into her present difficulties, he did not accuse her of having plunged rashly into this invasion. She had been encouraged to pursue the course which she had followed; but this course had now been pronounced by the supreme tribunals of the kingdom to have been beyond her powers; while her refusal to conform her policy to the law, as it had been declared, was leading her every day into greater and greater perplexities and dangers. The differences between the civil and ecclesiastical courts, in the Auchterarder case, had led

5.
Sir George Clerk's
Speech.

to the far more formidable dissensions in the Strathbogie; and the rejection of the presentee of Lord Kinnoul, had conducted to the suspension of no fewer than seven clergymen within her own bosom. The demand upon all parties to lay aside preconceived opinions, and to go hand in hand for procuring an adjustment, where an adjustment could now only be found, had, therefore, become apparent to every one. He did not, of course, seek or expect the co-operation of those, who thought that the bill on the table violated any great scriptural principle; nor did he look for the support of those who, on scriptural grounds, advocated the abolition of patronage itself; neither, he allowed, could they be found among the supporters of Lord Aberdeen's measure, who either held, that the mere expression of dissent, without reasons assigned, ought to set aside a presentation, or that a presbytery was bound so to deal with it, in consequence of the opposition of the people, even when convinced that the dissent was frivolous and unfounded. The bill before the assembly was founded on a different principle; and so far as opposition by the people, without reasons, regarded by the church as good and valid, was concerned, the church did not now, by law, enjoy an unlimited power of rejection—and such power the bill did not propose to bestow. To have done so would, he maintained, have been to alter, not to declare the law. By some, the measure was objected to because its introductory clause laid down a directory for the church, and in this manner, it was alleged, assumed a power incompatible with her spiritual independence and inherent rights. But he believed that, in its progress through parliament, no difficulty would be experienced in withdrawing the terms so understood, and leaving the church to frame her own directory for carrying out the principle of the act—namely, that of empowering the church courts to receive the objections of the people, of whatever nature, expressed in their own rude and simple language. In regard to the parenthetical sentence in the second clause, respecting due regard being had by the presbytery to “the circumstances of the parish, and to the spiritual welfare and edification of the congregation,” he contended, that it took away no powers given in the first clause, to judge of any objection whatever offered against a presentee; but

merely required, that the grounds of rejection should be set forth. And so wide, in his apprehension, was the power given under this bill to the church courts, that whenever a presbytery should lay their hands upon their hearts and say, "we think that, under all the circumstances of this parish, the presentee ought not to be settled there," they have the power to prevent his induction. Nay more; he would say, in illustration of the bill, that supposing the parishioners were to assert, that the sermons preached by a presentee were not edifying to them; that some of the vital doctrines, which were necessary to their salvation, were not sufficiently brought forward; and if this opinion was a conscientious one, it would, and it ought to form a good and sufficient reason in the judgment of any presbytery, to reject that presentee. The right honourable baronet then went on to state, that the practice of the church for fifty years before the passing of the veto law, had been to pay no attention to the objections of the people; and on this fact he rested a reason for agreeing to the bill on the table, although it was nothing more than declaratory of the law, as it always existed. The practice, he said, had been contrary to the law, and it was time again to declare what the law was. He argued that, in consequence of the abeyance into which the law had been permitted to fall, the church had been dragged into the civil courts; and that, consequently, nothing could afford her adequate security against this evil again recurring, except an act of parliament declaring the law anew. Lord Aberdeen, he said, was quite willing to alter the phraseology of his bill, in order, as far as possible, to obviate future litigation before the civil courts; but he would not consent, that under the plausible pretence of putting in a substantive for a parenthetical paragraph, the principle of the bill should be changed, so as to make it imperative on the presbytery to reject the presentee, whatever may be the reasons of the people. At the same time he admitted, that the proposed bill did give great and almost unlimited powers to the church courts; but he felt confident, that they would not abuse this power; and he had great reliance upon public opinion, as a check upon its exercise. He was well aware of the difficulties that would present themselves to the carrying of the measure through parliament, even with the

most entire and cordial concurrence of the church: without this concurrence these difficulties would be insurmountable.

It was understood that the right honourable Baronet had attended the General Assembly at this time, that he might, in his place as a member, explain the views entertained by Lord Aberdeen; and he appears to have had authority from his lordship, to agree to certain very important modifications in the bill, if insisted on by the church. The view which he gave of the bill was far, however, from being universally concurred in. It was maintained, with great show of reason, that he was not very consistent in that view; and when he asserted, that the mere opinion of the parishioners, if conscientiously entertained, that the sermons of the presentee were not edifying, would, under the bill, form a good and sufficient ground of rejection, he altogether overlooked the distinguishing feature of the measure—that reasons, satisfactory to the presbytery, must be furnished by the people in support of their objections, whatever these objections may be. It was, under this measure, to be the part of the parishioners to state, and their duty to substantiate, such objections as they believed would make out a disqualification to edify their souls; and it was to be the province of the presbytery to say, on conscience, whether or not they had done so. The mere declaration or opinion of the parishioners, however generally or however conscientiously entertained, that the presentee could not edify them, was clearly inadmissible as evidence to establish the allegation judicially; and had such a view of the bill been correct, it would have as clearly been a measure that would have rendered the rescinding of the veto law nugatory and altogether illusory. The assertion, that for the last fifty years it had been the practice of the church to pay no attention to the objections of the people, was hazarded by Sir George Clerk on this occasion without due consideration. The people had, in every instance, been called upon at the induction of the presentee to come forward and state any objections they might have to his being placed over them as their minister; but since effect had been given to the presentation—however slenderly signed might be the Call—the people had not appeared at the subsequent stage, when their right to object had

6.
Remarks on Sir
George Clerk's
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neither been questioned nor curtailed. The church, therefore, had been following no practice “contrary to the law;” and the right honourable baronet ought to have left the charge where he found it, in the hands of the non-intrusionists, who had always accused their moderate brethren of violating the rights of the people, and trampling on the laws of the church, in order to maintain a high-handed patronage. It was, in fact, in consequence of the non-intrusionists, when they obtained the ascendancy, proceeding on the assumption that the laws which provided for popular privileges had been “in abeyance,” that the church had been dragged into the civil courts. One of these alleged “laws,” or principles, which gave to the people a negative without reasons on the presentation of the patron, was accordingly revived—the party now in power not being content with the declaratory, but very debatable, enactment proposed by Dr Cook in 1833, that the people had always possessed the right, on the moderation of the call, to offer any objections they might see fit, beyond those affecting life and doctrine, but such also as might touch on the special fitness of the presentee for the parish to which he may have been nominated—the said objections to be disposed of judicially by the presbytery: And hence—and hence alone—arose the unfortunate collision between the civil and ecclesiastical judicatories, which it was proposed to terminate by the present bill.

Mr Dunlop, advocate, alluding to the admissions made by Sir George Clerk, that the bill before the assembly

7.
Mr Dunlop. could not satisfy those who were opposed to patronage,—that it must equally be unsatisfactory to all who held the veto to be the smallest instalment of the fundamental principle of non-intrusion that could be accepted,—and that, in short, it could not be approved by those who were determined to abide in their adherence to the principles on which the Church had proceeded—was quite prepared to ask whether the General Assembly was ready, in consequence of the trifling difficulty of a single year’s unsuccessful struggle with the legislature, to abandon the ground which they had resolved to maintain? He hoped not; the more especially as the church was now cheered on in her course by the overwhelming majority of the people of Scotland. But, coming to the merits of the measure before them, he

avowed himself out and out hostile to the *liberum arbitrium*, by which it was alleged by some that the non-intrusion principle could be given effect to under the proposed bill. He feared that, in working it out practically, party feelings might be permitted to operate to the defeat of the ends of justice ; and such a temptation to church courts to be dishonest, as it held forth, he deeply deprecated. Under a bill giving such powers to the church, he was persuaded that, in five years, her constitution would be undermined. He found nothing in this bill, that was in any shape calculated to maintain the principle of non-intrusion, to which the church had pledged herself. Those who thought that there was, proceeded on the utter misapprehension of what was the state of the law at present, of which this measure was merely declaratory. The decision of the Court of Session in the Auchterarder case was not, he maintained, confined to the Veto Act ; it plainly proclaimed that the declaration of the people, that the presentee could not minister to the edification of their souls, was not a ground of rejection recognised by statute, and was therefore illegal. According to him, the very law, adjudicated by the Court of Session to be the law—and from which adjudication all the mischiefs had arisen that were now overwhelming the church—had been simply declared to be the law by the bill then on the table ; and yet this bill was held up as a measure affording relief against the evils of which she complained ! He observed, that while this bill provided that any objections whatever might be offered, it did not go on to say that any objections whatever might be sustained ; and herein it differed from, and, in his opinion, was far more objectionable than the resolutions of Dr Cook in 1833. The presbytery, under this proposed law, were to specify the grounds on which they might come to the conclusion, that the presentee was unsuitable ; and in doing so they were bound, not in respect of “ the whole circumstances,” but in respect of the specific objections. The provision that the appeals should be to the ecclesiastical courts alone, had been adduced as protecting the church from all interference on the part of the civil power ; but he maintained, that as the church hitherto had been entitled, on her own responsibility, to say that a presentee ought not to be settled, the compelling her to specify the grounds was a new law,

and an obvious narrowing of her ecclesiastical province. The necessity of recording the grounds of her judgments was just to let in the civil courts, on complaint that the ecclesiastical had exceeded their statutory powers. There was, he allowed, no direct or proper appeal from the ecclesiastical to the civil courts, on the merits of the sentence pronounced by the former; but the same end was accomplished, whenever the civil courts could come in and say, "you have exceeded your powers; and in spite of your judgment, which we do not assume the power to reverse, we set aside your whole proceedings as *ultra vires*." The parenthetical provision of the act, no doubt, he said, gave authority to the church to allow a certain weight to the circumstances of the parish; but the civil courts might come in, under this provision, to say whether they had or had not given the due regard of the statute to these circumstances. If they found that the church had exceeded her powers in this way, her decision was void; while, at the same time, the civil courts claimed no direct power to review or reverse the sentences of the ecclesiastical. The last provision of the bill laid down as law, that if no good objection against the individual or against the settlement should have been stated, the presbytery should induct the man. Now, under this provision, he maintained that an objection to a presentee, that the preaching was cold and unimpressive, and unedifying, could not sustain his rejection; and the church courts must admit, although convinced that the opposition rested on the most conscientious grounds. He held the bill, as chaining the church down in fetters of iron to the law, as now declared;—as taking from her all power to accommodate her policy to any change of circumstances that might occur; and he would give it his most strenuous opposition;—not, he added, that he was insensible to the dangers and difficulties which beset the church in obtaining any legislative measure at all, but in the conviction that, with courage and consistency, she would prevail, and that at no distant period, over every obstacle that then opposed her. But if she accepted the bill then on the table, he held that her doom was sealed, and she would be cast aside as a despised and degraded thing, fit only to be treated with scorn and contempt. If, as he believed, there was a coincidence between what was now being attempted by the civil

courts and what took place two hundred years ago, when the crown claimed the supremacy in things ecclesiastical, as well as civil, he also looked forward, in the event of the present contest being persevered in by the aristocracy and civil courts, marshalled against the people of Scotland, to an issue in which the now opposing parties of the church's claims and the people's rights would be overthrown. It was grievous, he said, to think, that while the waves of democracy and anarchy were beating against the church from without, the cry of these assailants for the overthrow of the real bulwarks of all the institutions of the country should be met by a cheer from within. The learned member concluded with a powerful and impassioned appeal to the Assembly to reject the bill before them.

Had Mr Dunlop kept steadily and fairly in view, that the decision of the House of Lords in the Auchterarder case
 8. —whatever might have been the *dicta* of the learned
 Remarks. judges who delivered it—had been confined altogether to the Veto Act of the church, and had not gone a step beyond the right of the people to interpose in the taking of presentees on trials; and that, consequently, the bill of Lord Aberdeen, which professed to declare the law, as it had been pronounced, was necessarily confined within the same limits; and that neither the one nor the other had any regard to the powers of the church in the admission of the minister, after the stage of taking on trials was passed—even the judgment on the sustaining of the Call being left unnoticed by it—the construction put by him upon the measure before the Assembly, and the corollaries he drew from it, as to the privileges of the people, the rights of the church courts, and the powers of the civil, could not have been controverted. The bill did undoubtedly shut out the application of the non-intrusion principle, as it had been embodied in the veto law, at this particular stage of the settlement. It clearly prohibited a church court from refusing to take on trials, on the ground of the mere opposition of the people; and, when reasons accompanied their opposition, it did as manifestly demand, that the deliverance should rest on the homologation of these reasons, as good and valid, by the presbytery; and not on the mere view which the presbytery might take of what was due to

the circumstances of the parish, or the religious edification of the congregation. It might, indeed, be doubted if, in introducing the people as objectors, either with or without reasons assigned, at this stage of a settlement, the bill of Lord Aberdeen did not *alter*, not *declare* the law of the church of Scotland; but, when the church had passed the trial-taking stage, and entered on her special duty in the process of admission under the Act 1567, the decision in the Auchterarder case had laid down no rules by which she had been, or was to be bound henceforward; and the bill of Lord Aberdeen professed to give her as few for her future guidance. If the spiritual independence of the church was defined to be—a power within her own courts to say absolutely, whether they should or should not take a presentee on trials, that, if qualified, he may be admitted to the cure and benefice,—the decision in the Auchterarder case had distinctly repudiated such independence; and the bill came to confirm this view of the law. If the spiritual independence of the church is found in her power, after having taken on trials, to say whether the presentee shall be admitted or not to the living, the Auchterarder decision and the bill of Lord Aberdeen had both of them left this independence where it was.

Dr Macleod of Glasgow warmly eulogised the bill before the
 9. Assembly, and the truly patriotic exertions of the
 Dr Macleod. noble Lord who had brought it forward. As a measure removing doubts, where no one could deny that doubts had arisen, and out of which had sprung the existing perplexities of the church, it had a value of no small amount, and ought to be most gratefully received by every one friendly to the Established Church of Scotland. As it introduced no new element into the constitution of the church, he maintained that those, who were now within that church, could have no constitutional or conscientious dislike to it. All were agreed, he said, in receiving the non-intrusion principle; and he certainly thought that the mode of working this principle, proposed by the bill, was better than that of the veto; while, at the same time, in regard to a third way of accomplishing the same object—namely, what had been called the *liberum arbitrium*, or, in other words, a

transfer of the veto from the people to the presbytery—he was quite ready to say, that he would prefer the popular to the ecclesiastical check.

Dr Simpson of Kirknewton, on addressing the Assembly, asked
 10. the question, “Can the house acquiesce in the bill
 Dr Simpson. of Lord Aberdeen in its present shape?” and he answered, “No; it must undergo a great change, before the church can be reconciled to it.” He denied that it was a measure in entire conformity with the principles of the church, and fitted to carry them into effect. It was in vain, he said, to assert, that it contained the non-intrusion principle; and it was a mockery to speak of its being merely declaratory, and to argue that on this account the church ought to receive it, when, if it declared anything, it was that the law was just such as the Court of Session had decreed, and of which the church now complained, and for which she was seeking a legislative remedy. The letter from Lord Aberdeen, which had been read in explanation of the bill, placed beyond all doubt, that intrusion contrary to the conscientious will of the people was not guarded against; while the spiritual independence, which it acknowledged, was just as much, and no more, than the legislature might fix for the church, and the civil courts permit her to exercise. In this shape, he contended, the Assembly could not accept the bill; and, let the perils attending its rejection be what they might, they were nothing, in his estimation, in comparison of those that must arise from the desertion of those principles on which the church had now taken her stand.

At the distance of three years from this period, Lord Aberdeen
 11. re-introduced a bill into parliament—the substan-
 Remarks. tially same measure, according to his lordship, which was now under discussion; and among the foremost of its supporters in 1843 was Dr Simpson of Kirknewton! Nor did this reverend gentleman stand alone in this predicament. Not a few who, in 1843, received the bill of the noble lord with all manner of thankfulness, had been among the number of those who, in 1840, sternly regarded it as a mockery of the church and her independence. The reflection is forced upon us by this fact, that

if the ministers of the non-intrusion phalanx, who, on the secession taking place in 1843, remained within the Establishment, satisfied with the Scotch Benefice Act of that period, had joined with the Moderate party in 1840, in receiving the very same, or a very similar settlement of the question, instead of joining that party in refusing it, the peace of the church would then, in all probability, have been restored; and the unfortunate events, that afterwards occurred, would have been prevented. How much of the responsibility of these occurrences lies at the door of these men, is a question that may well be asked. However it may be answered, an instructive lesson may be learnt from the conduct of those who, halting between two opinions, where principles are so prominent as to leave no room for hesitation to honest men, see not, after all, how to avail themselves of that "tide in the affairs" of churches, as of men, "which taken at the full leads on to victory;" and are deservedly regarded, as clogging rather than adorning the triumph of the party uniformly consistent, and ultimately successful.

Dr Robertson of Ellon was of opinion that, in a question like
 12. that before the assembly, there was certain great
 Dr Robertson. principles to be kept in view. The well-founded objections of a congregation ought undoubtedly to find respect from the church courts; but it was equally their duty to take care, that a meritorious presentee should not be overwhelmed with obloquy. The rights and privileges of all parties concerned in a settlement might, and ought to meet on the same ground; and he thought the bill before the house furnished that ground. To the people it gave ample scope of objection; for he could imagine no objection whatever, however extraordinary or extravagant, that might not be brought forward under it; and such were the powers of the church conferred by it, that, if on these extravagant grounds she should reject a presentee, no civil court could review or reverse her decision. He held that, by the bill, it would be perfectly competent for a congregation to come forward and say, that the presentee preached the gospel in a dry, cold, and formal manner; and the people were not required to put into form their specific reasons. The church courts might require the discourses preached to be laid before them, and if they

were prepared to confirm the opinion of the congregation as to their merits, and to say, that the gospel was not preached in an edifying manner, then they ought of course to do so; and they might, he maintained, reject on this ground beyond the reach of the civil courts. The case, he observed, had been put of a pious christian congregation declaring that the presentee did not preach the gospel, so as to reach their hearts, but yet being unable to state the reasons; and this very case, he contended, was met by the bill. The presbytery could lay their hands on the discourses; could analyse them; and could pronounce, whether they were or were not conceived in the spirit of the gospel. The bill only required them to set forth the grounds on which their judgment was rested—and surely there was nothing in this unreasonable. He would suggest that the General Assembly, having had their attention called to the provisions of the bill introduced into the House of Lords, by Lord Aberdeen, should express their approval of the general principles and views upon which it is framed; and their anxious desire and prayer that the measure, when ratified by the legislature, may prove such as to secure the goodwill and cordial co-operation of all who are well disposed to our church.

In the speech which Dr Robertson delivered on this occasion, 13. he stood forward an advocate for the *liberum*
 Remarks. *arbitrium* of the church courts, in perhaps as wide and liberal a sense as had yet been demanded by any section of the non-intrusionists. The question, however, was not what objections the people might *offer* against a presentee being taken on trials; it was easy to imagine a very extravagant objection, furnished by Lord Aberdeen himself, which might, no doubt, be brought forward, but which the church courts could not entertain; and which, if they did, so far as to found a judgment of rejection upon them, the civil courts would interfere to suspend that judgment—namely, that the nominee of the patron had accepted a presentation. The zeal of Dr Robertson to represent the bill before the Assembly as bestowing the largest privileges on the people, and the most unlimited powers on the church courts, required still further repressive qualifications. He no less misrepresented the measure, than had Sir George Clerk,

when he appeared, as he did, to maintain that the objection of non-edification, unaccompanied by reasons valid of themselves, capable of proof, and duly substantiated, would be a ground of rejection under the bill, which the presbytery might judicially cognosce and determine; by demanding that the sermons preached by the presentee should be laid before them. It was, undoubtedly, the province of the church courts to say, whether the presentee was suited to promote the spiritual edification of the parish; and, in coming to this judgment, they might have a regard to the circumstances of the parish; but the very essence of the bill consisted in the people bringing forward reasons, establishing the non-edification, objected by them against the presentee being taken on trials at all. When, after escaping from the sphere of the proposed bill, the church courts proceeded to the examination of the presentee, his suitableness to edify the parish to which he had been nominated, as shown by his sermons, would be before the presbytery, whether the people had objected or not on this ground; but if, availing themselves of the privileges of the statute, they objected to the presbytery taking the presentee on trials at all, they were bound to offer objections clearly relevant under the statute, and to bring forward proof; and, in the particular case put by Dr Robertson, to condescend on the special grounds furnished by the sermons, that non-edification must be the result. To represent the people as entitled to object generally—"he cannot edify us"—was just to maintain that, contrary to the bill, they might bring forward objections not personal to the presentee; and then to send the presbytery to search in the sermons for grounds on which such an objection might possibly rest, was, in fact, to dethrone them as judges between parties standing at their bar, and to strip them of the judicial character, in which alone the bill recognised them as acting. By the same rule, the people might object simply, that they did not like the presentee; that he was not acceptable to them; and the presbytery might then order him to produce his sermons, that they, the church courts, might determine if there was anything in them which, in their opinion, ought to render him disliked and unacceptable. When the people came forward, under the act, to offer reasons why the presentee could not edify, from

either a deficiency of his gifts in general, or as applicable to the particular parish, or arising out of his preaching, the presbytery might reply, that on this point it would be their duty, when they went on to the examination, to ascertain if any such reasons existed; and while they refused to receive any such objection, as either necessary or competent under the bill, the suitableness of the presentee, as affected by his sermons, would not be overlooked. The production to the presbytery of the sermons preached before the people, on which so much stress was laid at the time by Dr Robertson, involved an incongruity of procedure altogether remarkable, yet not more strangely overlooked during the discussion. The objections to be offered, under the proposed bill, were against the presentee being taken on trials at all, as to his literary, theological, and other qualifications;—that is, against the presbytery looking into the qualities of the sermons he might be able to preach, their aptitude to edify, their textual conformity, their intelligible style and scriptural character. Yet, taking up the sermons under the proposed civil statute would, in fact, be to enter upon the presentee's trials, properly so called; and would necessarily so far prejudge points on which, sitting within their proper ecclesiastical province, they were afterwards to decide. It was, to a certain extent, as held by Dr Muir in regard to the veto, handing over the trials of presentees to the people of the parish—the presbytery, no doubt, sitting in judgment over any verdict they might pronounce, and affirming or reversing, according to its own views. It would be difficult to show, if such was the real character of the bill of 1840, and, consequently, of the Scotch Benefices Act of 1843, that it was not a most material innovation on the constitution of the church of Scotland, as fixed at the Revolution.

Dr Bryce adverted to the charge, which Dr Chalmers had
 14. brought against the bill of Lord Aberdeen, of
 Dr Bryce. violating the spiritual independence of the church. It was easy, he said, to put forth such vague and undefined imputations; but, in coming to a grave and solemn judgment on the question, he felt it necessary distinctly to understand, and to have understood by others, what was the meaning of the

terms employed. By the Church, in its widest and most catholic sense, he understood the "two or three," who might meet together to worship God, in the name of Christ; and, by the spiritual independence of this Church, he further understood the right and title of these two or three, so gathered together, to believe as truth what their consciences and understandings, enlightened by Scripture, taught them to be truth; and to worship God in the manner in which their understandings and consciences, under the same holy guidance, told them that God ought to be worshipped. He did not find that the bill before the Assembly interfered in the slightest manner with this liberty, by which Christ has made his followers free. But of course he would be called upon, and he was willing, he said, to narrow the meaning of "the Church," as confined to the office-bearers in the house of Christ, to whose hands "the power of the keys," as the standards of the church of Scotland express it, had been committed—the power of the keys being the right to administer the word and sacraments; and he was prepared to acquit the measure before the Assembly of trenching upon this independence. Certainly he had seen no attempt made by those who had brought the charge, to show that the bill interfered with the church, as he had now defined it, exercising the power of the keys. But he would come to still closer quarters with those who urged this violation against the bill. He would understand by "the Church," the Church of Scotland as by law established; and he was prepared to say, that, in the only sense in which an argument under this view of the question could be raised, the church had no independence to be violated. As created by the law, it was a palpable contradiction in terms, to assert that she was independent of the law. Of the spiritual independence, which belonged inherently to every church, and to every Christian, the Church of Scotland, in becoming dependent on the law of the land, had not sacrificed one iota. But he was now speaking of a carnal and secular relation, into which she had entered with the State; and the very first and fundamental condition of this compact, and one implied in the very necessity of the case, and in conformity with all Protestant principles, was, that the ecclesiastical should be subordinate to the

civil magistrate, in so far as the recognising of his power, to take order that the church did her duty, in preaching the doctrines mutually fixed on, as accordant with scripture, and no other; and conducting her government and discipline according to the rule laid down, on the formation of the union. This subordination the bill on the table of the house did most certainly maintain; and it was only to him, he said, the more acceptable a measure, because, on this very account, the more calculated to provide for those civil and religious liberties of the country, which had been won at the Reformation. Where obligations were come under in a social state, there must be a power somewhere to compel their being observed; and where, he asked, in a Protestant country, could this power be lodged, except in the civil tribunals? The decision in the Auchterarder case had fixed the law to be, that a presbytery cannot refuse to take a presentee on trials, because of the dissent, without reasons assigned, of the parishioners, or any proportion of them; and the measure before the Assembly did not, in affirming and strengthening this decision, invade or withhold any rights possessed by the Christian people. Doubts had certainly arisen, whether the people had or had not the privileges—whether the church courts had, or had not, the powers—severally put forth in the Auchterarder settlement; and these doubts had so far been judicially disposed of. But, in the opinion of many, circumstances demanded, and the peace of the church required, that these doubts should also be legislatively settled; and this he thought the bill before the Assembly was well fitted to accomplish; while to some—and he acknowledged himself among the number—the necessity of at all introducing any measure might not be so very evident. In the matter of examination and admission of ministers, he held that the bill left the church under the Acts 1567 and 1592, which had provided that these “sall be in the kirk.” With these rights and obligations the present measure did not interfere. But a right on the part of presentees to be admitted, if found qualified, supposed a duty on the body admitting, to take on trials the party seeking to be admitted. The bill left the church courts at liberty, to refuse this taking on trials, on any grounds she might see fit, save and except on those which the law had already declared to be

ultra vires ; and which this bill did not propose to bring *intra parietes* of the church courts. Its title bore, that it was a measure to remove doubts ; but certainly it had reference to no doubts, as to the popular veto in the settlement of ministers. But he could acknowledge no sacrifice demanded by it, of the just rights of the people. He saw no objections to the taking of a presentee on trials, which under this bill the people might not *offer*, subject to the judgment of the presbytery ;—which judgment must itself be reached according to the terms, and within the limits of the statute. He therefore found the church courts vested, for the benefit of the people, with powers which, if presbyteries had not always been called upon to exercise, at the particular stage at which they were now to be brought into action, he believed they had always possessed at some period in the process of a settlement ;—powers which, he did not doubt, would be regarded by many as far too extensive, consistently with the rights of patronage. He did not say so : he was ready to take this bill, with all the powers which it gave to the church, in the hope that these powers would not be abused. Presbyteries, in their exercise, would be subject to the review of the superior church courts ; and public opinion would bear upon them, and, he doubted not, would keep them right. He was, moreover, willing to take the bill for another and he hoped a legitimate reason, that, if the church was not content with this bill, she could expect no better from parliament ; and, if such assistance was indeed necessary, could therefore look to no legislative aid, in healing the sad divisions that were distracting her. He thought that, to the noble Lord, who had stepped forward to attempt this most laudable and patriotic object, the church and country were under the strongest obligations.

The views now brought forward, in this debate, were those of
 15. that party in the church, who were afterwards desig-
 Remarks. nated by Lord Aberdeen himself, as the “violent
 moderates.” Had these views been afterwards followed up still
 more unambiguously, in the Scotch Benefices Act of 1843, which
 undoubtedly upholds the supremacy of the State over the Church
 in matters ecclesiastical, the Reformation of the sixteenth century
 would be rendered a more finished work, than many are willing to

allow that it is; and the Church of Scotland would be purged of that portion of popish leaven, which still lurks within her. His lordship, therefore, would have done greater justice to the section of churchmen, whom he afterwards represented as "violent moderates," if he had held them up, as the sound and consistent Protestants of the Establishment. We have only, however, to compare the views entertained by Mr Dunlop, in the course of the debate, with those upheld by Dr Bryce, cheered and supported as each of them was within the Assembly, to be satisfied that even already had a great schism occurred in the kirk.

Dr Begg of Liberton regarded the bill as utterly incapable
 16. of improvement, except its whole principle should
 Dr Begg. be changed. The broad and intelligible ground, on which the church had again taken her stand in 1834, had been "that no minister be intruded into a parish contrary to the will of the congregation;" but, said he, let the views taken by the supporters of this bill be gone into, and the measure before the house accepted, as grounded on and carrying out these views, and the principle would be, that "no minister shall be intruded contrary to the will of the presbytery." If the assembly approved of the bill, they must, he said, proceed forthwith to do those things which they had hitherto refused to do. They must admit Mr Young into the parish of Auchterarder, and Mr Edwards into that of Marnoch; and, should it be necessary, they must, as in other times, apply for the aid of "bayoneted soldiers" to assist them in intruding ministers upon reclaiming congregations. The bill, he allowed, did give a sort of apparent countenance to the principle of ecclesiastical jurisdiction, as the church had demanded it; but it was, he maintained, apparent only; for the parenthetical clause, which seemed to bestow this jurisdiction, would, as had been shown, be utterly worthless in a court of law. He demanded of the church the power of interpreting her own jurisdiction, and of giving effect to it in spiritual things. In this, he said, lay the very essence of the controversy; and as the bill utterly repudiated this claim, it was radically and fundamentally defective. If the church permitted the civil courts to interpret what were her spiritual duties, she would, he contended, put

into the hands of the Voluntaries the strongest argument for the overthrow of every Establishment whatever. He saw nothing for the Church, in the circumstances in which events were placing her, but a glorious separation from the State—retaining all her principles entire and uncontaminated, while she surrendered her endowments, or an abandonment of those principles, and the consequent desertion of the best of her people.

In this speech Dr Begg occupied, without disguise, the high ground of ecclesiastical jurisdiction contended for by
 17. Andrew Melville in the days of James VI. ; but he
 Remarks. misrepresented the bill before the Assembly, when he asserted that, if passed into a law, it would compel the admission of Mr Young to the benefice and pastoral charge of the parish of Auchterarder. The only effect would be, to compel the presbytery to take him upon trials, if the people of the parish should offer no objection satisfactory to them, that he should not be so taken.

Dr Hunter of the Tron church, Edinburgh, thought that the
 18. first step which the church ought, in expediency
 Dr Hunter. alone, to have taken, was the rescinding of her veto law, not to speak of the higher principle which ought to have conducted her to the same course. The veto had been declared, by the highest court in the kingdom, to be an invasion of the rights of patrons, as these are protected by law ;—rights, which extended to putting the presentee in possession, not of the benefice only, but of the cure of souls attached to it ; and he held it to be, moreover, an unwarrantable delegation of duties to other parties, which the great Head of the Church had laid upon the office-bearers in his House, as distinct from the people. The bill of Lord Aberdeen preserved these duties to those scripturally intrusted with them, as did also the law of the church of Scotland : it conferred on the church courts the power of defining the extent of their jurisdiction, in judging of the qualifications of presentees : it recognised this power as extending beyond the general grounds to which, practically, they had been so long confined, and as embracing the *special fitness* of the patron's nominee to the particular charge, to which he had been presented. In doing so, it also laid the people under the necessity of giving reasons in support of their objections, if they offered any ;

and he did not think that, in doing so, it laid them under any improper bondage. Their language might be plain and homely, but they might render their opposition clear and intelligible; and the church courts, under this bill, would give a judgment on the value and effect of their objections, with which the civil courts could not possibly interfere. He acknowledged that the bill gave, or rather recognised power in the presbytery, to deal with these reasons as it might see fit; and it was possible that a whole congregation might object, where, to the presbytery, it was evident that the person objected to was just the man, who was to prove the zealous and faithful servant in his Master's cause. Such power, he admitted, might be, and had been, abused; but, as the general principle to be observed, Christians are not the less bound to obey their spiritual rulers. He believed, moreover, that the measure before the Assembly opened a door to the restoration of peace, consistently with principle; its terms might perhaps be improved, but he trusted the house would not refuse to sanction it.

Dr Cook, at this part of the debate, moved an adjournment; and at the same time laid on the table the following motion, which he proposed as an amendment on the Resolutions of Dr Chalmers:—"That the General Assembly, having heard the report of the committee appointed by last Assembly to communicate with government, in relation to the unhappy collision which had taken place between the ecclesiastical and civil powers, are of opinion, that the act on *Calls*, commonly denominated the Veto Act, shall, under existing circumstances, be set aside; and having considered the draft of a bill of the Earl of Aberdeen, approve of the general tenor and spirit of that bill, as consistent with the law of the church, and calculated to give effect to that law; and therefore appoint a committee to watch over the progress of the bill, and give to the noble mover such suggestions as may, in their opinion, tend to promote the important objects contemplated by it."

At this time, Dr Cook contented himself with placing his motion before the Assembly, and did not enter into any arguments in support of it. It is not a little curious, however, to contrast its terms with those of his motion in the Assembly

19.
Motion by Dr
Cook.

20.
Dr Cook's disposal
of the Veto act.

1843, which finally set aside the Veto Act of 1835. At this time, 1840, Dr Cook was content with moving that the Veto Act “shall, under existing circumstances, be set aside.” He regarded its operation prospectively, and he said nothing by which it might not have been inferred, that he proposed its being “set aside,” as it had been enacted through an overture sent down to presbyteries. In 1843 such a mode of disposing of it was rejected; the Assembly looked back, and on a solemn vote, carried by a large majority, pronounced it to have been, *ab initio*, a nonentity.

21. Sir James Forrest, Bart., was altogether opposed to the bill of Lord Aberdeen. He held it to be destructive of the principles of non-intrusion, to which the church stood solemnly pledged; and the only doubts which it removed were, in his view, that it declared the Revolution Settlement to have left no right at all to the Christian people, in the choice of their ministers. It did not, he allowed, pretend to take away the rights of the people under the moderation of the Call; and there the principle of non-intrusion might still find a safeguard. But it gave the fullest support to patronage, which had been the bane of the church of Scotland, and was, at this day, as he maintained, held in the greatest detestation by the people of Scotland. The principle of non-intrusion, as defined by the church since 1834, was loudly called for over the country—a fact, he said, acknowledged by men of all parties; and he had no hesitation in saying, that unless the right of rejecting any unacceptable ministers was given to the people, the bill on the table would be utterly worthless.

22. The Rev. Mr Bissett of Bourtie gave his support to the bill, although he could not concur in all its details. It carried, at least, no marks of party bias upon its face, and was entitled, on that account, to the greater attention; and it provided a remedy against the violence and poison of the Veto Act. He denied, however, that the people of Scotland were so unanimously in favour of non-intrusion, as now defined by the church, as had been asserted. The five Universities had returned members to the Assembly decidedly opposed to it; the right honourable gentleman, who had asserted that the country was favourable to this doctrine, had himself been driven from

the representation of the city of which he was chief magistrate, just on account of his entertaining non-intrusion principles, and had only found his way into the house through a presbytery so called—but certainly very egregiously miscalled.

The Rev. Dr P. Macfarlane, of Greenock, said that he could not
 23.
 Dr P. Macfarlane. do justice to the question before the Assembly without entering on both of the disputed fields of spiritual independence and non-intrusion. He maintained, that the exclusive jurisdiction of the church of Scotland, in matters spiritual, was a right inherent in her, as a church of Christ. In virtue of this right, he held that she was entitled to legislate and adjudicate on all matters, which she pronounced to be spiritual, as she herself might see fit; and no civil court had any power to interfere with her. In carrying out these doctrines practically, he admitted that the church might come into collision with the civil magistrate; but he and his friends were not to be charged with rebellion against the law of Scotland, when, in abiding by the great principle of the church's inherent powers, they could not, conscientiously, give obedience to the requirements of the civil courts. It had, no doubt, he said, been argued that the church of Scotland has no ecclesiastical jurisdiction, except what acts of parliament had given her; but this he denied. He reminded the house that, in 1560, the Protestant religion was declared to be the religion of the land; and from that day the church of Scotland had been found exercising the rights of spiritual jurisdiction inherent in her, altogether independently of the State. The question, then, according to his view came to be—Is the church's independence endangered or invaded at this moment? The proceedings in the civil courts would answer this question in the affirmative, and would as clearly indicate the line of the church's duty. He had always held the principle of non-intrusion, or that rule which laid down, that no minister should be intruded into a parish contrary to the conscientious mind and will of the people; while he would not reject a presentee, vetoed by the people from no other motive than to nullify the right of the patron. He had no love, he said, for patronage; but he would not attempt to abolish it by a side-wind. He maintained, in opposition to what had been so frequently put forward, that the

act 1835 did not take the power of judging from the presbytery, and give it to the people. Both parties possessed, and were entitled and enabled to exercise this power. He was, for one, willing to rescind the Veto Act, if a better mode of providing for the principle of non-intrusion could be adopted; and he was ready to go into the suggestion of Dr Chalmers, bringing forward the *liberum arbitrium* of the church acting in her judicial capacity, and giving up her power and right to provide legislatively for the same object. But the bill of Lord Aberdeen was not, in his opinion, calculated to bring about a settlement of the differences that had arisen. He held it, in fact, as placing the church in worse circumstances than those in which the decision in the Auchterarder case had landed her, and to escape from which was now the great object she had in view. As regarded her spiritual independence, he maintained that the bill on the table could only rivet more closely the chains which the civil courts had imposed. It was no proof, he said, that the church of Scotland enjoyed the independence, that is inherent and essential to her, as a church of Christ, that the power of the civil courts is only let in by the bill, when the ecclesiastical exceeds or falls short of her statutory duties. Every body of men, he admitted, might do wrong; and if the church intruded into the civil province, interference with her might be necessary. But it did not follow, that the church could be coerced, when she was exercising her inherent rights. He concluded that, as the bill had been differently interpreted in different quarters, he had no objection to a conference, with the view to its being altered, so as to provide for the great principle for which the church was contending.

Of all the speeches against the bill of Lord Aberdeen, that of Dr Macfarlane occupied at once the highest, and the least ambiguous ground. According to him, the church courts were not only the judges, and the only judges in all matters spiritual, but with them it rested to say, whether the matter in question was spiritual or not. It followed, on the application of these views to the present question, that, if the legislature should enact, as a condition of the Church enjoying the endowments of the State, that she should take upon trials the presentee of the legal patron, the question—whether the church would or would not,

24.
Remarks.

in any case she saw fit, enter on the discharge of this duty, was a spiritual matter, and altogether and solely within her jurisdiction, uncontrolled by any other authority. Whether the law, as passed by the legislature, were or were not to be obeyed, would, on this theory, be a spiritual question, or would become so whenever the church saw fit to declare it ! Never, certainly, did the papacy, in its most palmy days, spread out a spiritual net more adapted than this, to embrace within its compass all and every transaction, deed, covenant, or compact in which men can be engaged ; and it creates no little astonishment, that the world should be called upon to listen to such doctrines in the nineteenth century, and that the preacher should be a minister of the Reformed and Protestant church of Scotland. In perfect consistency, however, with these views, the rights of the Christian people—the “royal priesthood,” the “Church” of the scriptures *par excellence*—were treated by Dr Macfarlane as of secondary importance. He did not contend for their title to pronounce what is spiritual, and what is not. They, as well as the civil magistrate—with whom, indeed, they are bound up, when this magistrate is *pious et Christianus*—were to take this from the church courts ; and even an unacceptable minister was to be intruded upon them—an acceptable to be taken from them—when ever the ecclesiastical tribunals saw fit so to rule. If Dr P. Macfarlane was to be regarded as a faithful and correct expounder of the creed of the Spiritual Independence-party in the kirk, no surprise need be excited, that their claims for ecclesiastical jurisdiction should have been rejected by a Protestant government ; but it may create not a little astonishment, that the Christian people, submitting to be ruled by such *dogmata*, should boast of being the only Free church in Christendom !

25.
Dr Paterson. The Rev. Dr N. Paterson of Glasgow had been, he said, afraid, when he first saw the bill, that its defects might have been overlooked by the people of Scotland, and that the desire of peace might have led them to approve of it. He had been relieved from that apprehension ; the bill had not pleased, and it never would please the people of Scotland. It did not secure the church courts from being interfered with by the civil ; although some persons pretended, he said, not to see how the Court of Session could ever again come in upon a presbytery of the church, acting

under this measure. It was true, that the bill provided for the "appeal" being exclusively to the ecclesiastical courts. But it was not the "appeal" that he feared; it was the application of the patron or presentee to the civil courts, on the ground of civil right. This application, he said, was not shut out by the bill. On the contrary, what, he asked, was the reason for rendering it imperative on a presbytery to record the grounds of its deliverance, except to let the civil courts in to judge, on complaint, whether the deliverance had been within or beyond the statute? "The Earl of Aberdeen," said the reverend gentleman, "has fully and manfully explained his views. I rejoice at this openness, for it discloses what is necessary to warn and prepare us. How can we go back to our people, after the professions we have made, if we agree to the terms of this bill? What figure would we make with the tale, that, after all our declarations, we have accepted a bill, which goes to ratify by law what, for a hundred years, had been done against the law?" By such conduct, he maintained, the church of Scotland would only make herself a secular and degraded thing.

Principal Macfarlane of Glasgow University supported the bill,
 26.
 Principal Macfar- because it gave an additional safeguard against all
 lane. interference from without, and also an additional
 guarantee against the church injuring herself by any wanton or
 capricious exercise of authority from within.

Professor Hill of Glasgow gave his support to the bill, as a
 27.
 Professor Hill. measure restoring the constitution of the church,
 which, it appeared to him, had been subverted by
 the veto law; and he implored the Assembly, for the sake of peace
 and religion, to agree to it.

Mr Earle Monteith, advocate, declared, that if this bill were passed
 28.
 Mr E. Monteith. into a law, the death-doom of the Church of Scotland
 would be sealed. There might, he said, be peace after-
 wards, but it would be the peace of death. The affections of the
 people would be withdrawn, and they would not long endure a church
 establishment among them, for which they had lost all love and esteem.

Dr Chalmers replied; and, on a division, two hundred and
 twenty-one voted for the resolutions of Dr Chalmers, and one
 hundred and thirty-four for the motion of Dr Cook.

CHAPTER II.

NATIONAL EDUCATION. — PARLIAMENTARY GRANT IN AID OF
NATIONAL EDUCATION, TAKEN INTO CONSIDERATION BY THE
GENERAL ASSEMBLY.

THE very close connexion which had existed at all times between
1. the Church and the educational institutions of Scot-
Interest taken by the Church in edu- land—a connexion recognised and fortified by laws
cational matters. and statutes, the most fundamental—forbade that
church remaining an idle and inattentive spectator, when the all-
important question of a National Education came to be agitated.
For a considerable period, after the most serious apprehensions of
evil had come to be entertained, from the policy hitherto pursued
in this department, public attention had not been drawn, as it
ought to have been, to the vast proportion of the rising population
of the country, that was growing up in utter and deplorable
ignorance; but by this time the fruits of this ignorance were
standing frightfully forward in a tide of vice, immorality, and
crime, that threatened the very existence of all social order; the
attention of all classes had become roused to the dangers that were
gathering around, if this tide should not be stayed in its course;
and the necessity had become apparent, that the supineness, in
which England had so long rested in this matter, could no longer
be indulged in.

Before the legislature was urged to move in this important
2. matter, not a little had been done, indeed, by the
Circumstances of Church of England, and the various religious bodies
England. in that country, to supply its educational wants; but it had become
apparent to all, that to leave this supply to the voluntary resources

of private benevolence was a policy which could no longer be trusted to with safety ; and that, if the very existence of the commonwealth was to be secured, the legislature must set its shoulders to the support of a national education. Turning to Scotland, where a national endowment for educational purposes had so long been known, the universally acknowledged good fruits, which that country had reaped from it, might well have encouraged parliament to place England, as far as possible, under a similarly happy educational machinery. But, unfortunately, neither the circumstances of the country, nor the spirit of the age, would permit the erection in England of such a system of parochial schools, as it had been the boast and happiness of Scotland to enjoy. It is as singular, as it must be regarded as unfortunate, that in the very first steps proposed to meet the tide of ignorance, and consequent immorality and crime, through an adequate appropriation of the public resources to the purposes of education, the element of the Religious Instruction to be given, should have been found to present the most formidable obstacles. Yet, of all the questions that can be raised, in regard to the economy of schools to be erected and supported by the State, that of the religious education to be given within them is unspeakably the most important. Could the tide of vice and immorality, when threatening a nation with destruction, be stayed by the more enlarged extension of that knowledge which is merely secular, little difficulty might be encountered in laying down the system to be pursued ; and doubtless there are those who think, that in this knowledge a remedy may be found against all the impending evils. Such views were never entertained by the fathers of the Scottish Reformation ; and, fortunately, the common sense and piety of the great body of the people of England have hitherto spared the legislation of that country from being led astray by such fallacies. The creed, on which has rested the whole educational system of Scotland still holds its ground in the sister kingdom—that the education, which is not based on the knowledge and belief of the great doctrines of religion, is more likely to minister to the downfall, than the support of any State. How long this salutary faith is to maintain its footing, as the rule of public policy, is a problem yet to be solved. Opinions

are even now obtaining, upon this great article of the legislator's creed, that are paralysing and impeding his efforts to meet the educational wants of the country; and rendering that a matter of the greatest difficulty which, under the sound and salutary views entertained by the Scottish Reformers, ought to present the fewest of obstacles.

The exertions of the Home Mission and Church Extension Com-
 mittees of the Church of Scotland, to provide the
 means of a more extended and efficient pastoral
 ministration, and to cultivate the moral and religious
 wastes, that now presented themselves, alike in the sequestered wilds
 and the populous and overcrowded cities of the country, had been
 eminently praiseworthy; and to as great an extent, perhaps, as
 had been expected, they were, under Providence, proving successful.
 But such remedies as these excellent schemes held forth were ob-
 viously inadequate to reach the evils that threaten the subversion
 of all social order; and until "the godly upbringing of the young"
 is better provided for, and means employed for this purpose, com-
 mensurate with the growing demands, and in unison with the
 existing circumstances of society, nothing effectual can be done,
 towards accomplishing the moral and religious regeneration now so
 loudly called for. To no object, therefore, more worthy of her care
 could the attention of the Church of Scotland be drawn. To the
 singularly sagacious means adopted for its attainment, by our pious
 fathers, has Scotland been mainly indebted for the high place, which
 she has hitherto held among nations; and the distinguished and
 honourable part which her sons, in all parts of the globe, have been
 found to act, has borne a testimony, often referred to by Scotch-
 men with no unbecoming pride, to the excellence of that system
 of education in which her youth have so long been trained. As
 auxiliary to the parish schools, those established by the Education
 Committee of the church have ever been regarded as demanding
 the greatest attention; and over none of her great Schemes has the
 church of Scotland been more carefully vigilant. If it has proved
 the source of so much honour and advantage to Scotland, that her
 educational interests should have been confided by her laws to the
 ecclesiastical courts of her Establishment, everything tending to

3.
 Education Scheme
 of the Church.—
 Its importance.

endanger the relationship between the School and the Church ought to be watched with the greatest jealousy ; and hence arose the more than ordinary interest taken at the Assembly 1840 upon the bringing up of the Report of the Committee on Education. The attention of the church of Scotland was, for the first time, called by this Report to the measures which had been adopted in parliament for the more effectual diffusion of education over the empire. When a grant was voted by the House of Commons, to be placed for this purpose at the disposal of a Committee of Privy Council, it was not at first proposed that the boon should be extended to the schools of Scotland ; and when this at length was suggested, the conditions on which it was offered became in that country, as they had been in England, a subject of very grave consideration, more especially as regarded those under the inspection or control of the Established Church. One of these conditions was, “ that the right of inspection of all schools, receiving any portion of the public grant, shall be allowed to the committee of Privy Council ; and that for this purpose inspectors should be appointed, from time to time, to visit and report upon these schools.” The minute laying down this condition proceeded to declare, “ that the inspectors, so appointed, will not interfere with the religious instruction, or discipline, or management of the schools, it being their object to collect facts and information, and to report the result of their inspection to the committee of council.” Further information in regard to this condition having been asked from the Committee of Council, by the Education committee of the church, it was intimated “ that the inspection should be carried on in co-operation with the church of Scotland, as regards the schools which are placed by law, or by the condition of their endowments or constitution, under the superintendence of the church of Scotland ;—that the inspector is, in no respect, to interfere with the instruction, management, or discipline of the schools, or to press upon them any suggestions which they may be disinclined to receive.” It was further added, “ that the Committee of Council consider, that much advantage will arise from their Lordships having the opportunity of consulting the Education committee of the general assembly, with respect to the appointment of the inspectors of schools.” Looking to the control and superintendence, over the

parochial schools, given by statute to the presbyteries of the church of Scotland, there was certainly room to fear that, in such arrangements as were now proposed, there might ultimately arise difficulties which, at first sight, might not be so very evident. Even in regard to the schools more exclusively under the Education committee of the assembly, there was ground for apprehension, that the principles on which they were erected might come to be infringed. It excited, therefore, no surprise in the Assembly to find, that the deliverance by the Education Committee, that there appeared no grounds for rejecting the proposed grant by government, on the conditions explained in the communications of the Privy Council, cautious as it was, should not have been reached without a division. Could events, that have since occurred, have been anticipated, and could it have been foreseen, that measures would be proposed to parliament, with the avowed purpose of taking away the control vested by law over the parish schools of Scotland in the church courts of the Establishment, still greater jealousy would have likely been displayed by the Education committee of 1840. It has happened—whether for the benefit of the educational interests of Scotland or not remains to be seen—that the advance towards the overthrow of the rights now vested in the church of Scotland, has been simultaneous with the diminution of the jealousy within the Education Committee and the General Assembly.

At the same time that the report of the Education committee
^{4.}
 Overtures from was given in, overtures were brought forward from
 Presbyteries. various presbyteries, protesting against the receipt
 of the parliamentary grant on the conditions offered. Very
 different and opposite views on this important subject were now
 entertained within the Assembly. On one point, indeed, all was
 harmony and cordial unanimity—that the parochial schools of
 Scotland were the glory and boast of the country; that they had
 become so through means of the duties and the control, and super-
 intendence over them, which the law had given to the national
 church; that this control and authority must be preserved
 inviolate; and, above all, that no countenance must ever be given
 to the disjoining of religious and secular instruction in our public
 schools. The difference of opinion arose on the effect, which the

condition of inspection by the Privy Council, and its officers, might have on the relation subsisting between the parish school and the church, and on its consequent bearing on the godly upbringing of youth. By some, it was contended, that the crown had constitutionally all the right of inspection, here made a condition of the grant to be bestowed, and might, at any time, unconditionally exert it over all the public institutions of the country,—a view of the subject, however, which did not enter essentially into the question, as presented to the Assembly. It was also argued, that the bestower of the grant manifestly possessed the right to see that it was properly devoted to its intended purpose—a view equally remote from the real merits of the question, and which, indeed, assumed all that was now in dispute, namely, that the conditions of the boon involved no risk that the superintendence of the church over the parish schools would be superseded or weakened, to the defeating of the great object which these schools had in view. It was not maintained that the appointment of a government inspector, as provided for by the minute of council, would directly or at once bring this about; but by several members of Assembly it was regarded as the commencement of a system tending to undermine the authority of the church in the matter of education. It did not appear to them, that the inspection now proposed by the Privy Council could be regarded as similar to the right of the crown to the general inspection of Universities, where the exercise of such right was deemed necessary. The difference between the two cases was, indeed, palpable. The exercise of the right in the one was compatible with the existence and exercise of all the statutes and privileges given to the inspected body; in the other, there was too good ground to fear, that it might and would be destructive of those rights. The object of that relation, which statute had created between the established church and the parish schools in Scotland, was the combination of religious with secular knowledge; but events were, by this time, occurring to prove, that the system of education contemplated in high places was the disjunction of these—their union under any shape coming now to be regarded as *sectarian*. There was reason to fear, that the Committee of Privy Council, having the dis-

posal of the parliamentary grant, went into these liberalised views; and hence the jealousy that ought to be felt, certainly not less by the church of Scotland than the church of England, in its operations. It was found, indeed, that the country was not prepared, as yet, to sanction a legislative measure carrying out such a system of national education, as the liberal statesmen of the age had demanded; but they had obtained a grant from parliament, by which they might work out its accomplishment, after another and more insidious fashion.

These important subjects, embraced by the Report of the Education committee on the government scheme of education, had been taken into consideration by the August commission of the assembly 1839, who had unanimously remonstrated against it in a memorial to the Privy Council; and Dr N. McLeod, who now took the lead in the debate within the assembly, animadverted strongly on the Education committee recommending the acceptance of the grant in the face of the memorial by the Commission, and having even gone so far as to sanction its being applied for by several presbyteries. He submitted to the Assembly a series of resolutions, setting forth the rights secured by the Treaty of Union and Act of Security to the church of Scotland, in the matter of national education; her determination not to forego these rights, her conviction that they can only be duly respected and preserved where the conditions annexed to any additional grant in aid of parish schools are known to, and have been approved of, by the General Assembly. The same resolutions disapproved of the proceedings of the Education committee, in recommending the acceptance of the grants offered, while the conditions were constitutionally unknown to the church, and inhibited all church courts from receiving the same, until this was the case.

These resolutions were ably supported by Sir Charles Fergusson, who, while he drew the attention of the Assembly to the utter inability of the means now in operation, to meet the educational wants of the country, was not prepared to sanction any means proposed without a regard to principle. It had no weight with him to allege that, if the church did not accept

5.
Remonstrance of
the August Com-
mission.

6.
Sir Charles Fer-
gusson.

the grant on the conditions offered, the Dissenters would do so, to the detriment of the parochial system of education. It had been said that the church ought to throw open the doors of the parish schools, and cheerfully admit the most strict inspection; but he did not believe, that there was a presbytery within her bounds, who, looking to the place, which the law and statutes had given to it, in controlling and superintending the national education, would either invite or accept such inspection, by a committee of the Privy Council, as was now under consideration, were it unaccompanied by a pecuniary boon. He doubted much whether the statutory control of presbyteries, and the discretionary inspection by the Privy Council, would in practice be made to coalesce; or how far the former might not, in time, be superseded by the latter. It seemed, moreover, to be on its face a nugatory provision, that the council should appoint inspectors, but that those inspectors should not interfere with the religious instruction, or discipline, or management of the schools.

Principal Lee took a different view of the question from that
 7. entertained by the mover and seconder of the
 Principal Lee. resolutions; and warned the Assembly not to commit itself rashly against the right of the government to inspect the parish schools of Scotland—a right, which he held it to possess, and could easily show that it had exercised from the earliest times, with the concurrence of the church. If the argument were good, that this right could only be exercised where complaint of something wrong had been made, nothing, he said, could be easier than to get up such a complaint, and let in the inspection: but, without reference to the rights of inspection, which the giving of the grant might further carry along with it, he held that the remissness of many presbyteries, in discharging their duties in regard to national education, rendered the interference of government far from inexpedient.

At this stage of the discussion it was proposed by the Rev. D.
 8. Macfarlane of Renfrew, who was not satisfied, whether
 Mr D. Macfarlane. on principle the church ought to accept the grant, as offered, that presbyteries should be consulted, by transmitting the subject for their consideration;—a proposal, which it might have

been expected would have met the concurrence of all parties;—and in which those, who supported Dr M'Leod's views were willing to concur.

Dr Hunter of the Tron church, Edinburgh, in a speech of singular ability, and calm and Christian earnestness, addressed himself to this educational question in all its bearings. He honestly expressed his fears, that the conditions annexed to the grant might one day banish from the parish schools of Scotland what had been their boast and glory—the Bible and the Catechism. He did not maintain, that this apprehension could be reached, by regarding the condition of admitting inspectors, who did not derive their authority from the church courts, as an insulated provision. It was when taken with other circumstances, that had occurred, that it became with him a matter of well-founded fear. It was well known to be the object of an influential class of statesmen, to promote a system of national education in which secular and religious education should not be united—in which, in other words, religion was not to be taught within our public schools, and where, of course, the holy Scriptures were not to be read. Unable to carry such a measure, under the resistance offered to it by the Christian public, these statesmen had become willing to admit a modification, to the extent that the Bible should be read in schools, but not expounded according to the received standards of any church. In this also they had been defeated. Their next attempt to get in the irreligious wedge had been the establishment of normal schools, where the teachers, as well as the pupils, should be instructed in what was called the “principles of general religion,” or such a system as it was assumed would give offence to no section of religionists. This also was abandoned; and then from the same quarter emanated the project of promoting national education, by means of the parliamentary grant placed at the disposal of the Privy Council, and under such conditions as they might establish:—the parties who had been defeated in their more direct endeavours to disjoin religious and secular education consoling each other with the prospect, that the country would soon come round to their opinions. It was out of these circumstances, that his apprehensions in regard

to inspectors appointed by, and accountable only to, the Privy Council, had arisen. The parties now intrusted with the selection of these inspectors, might undoubtedly, as sound and pious Christians, be all that could be desired; but there was no security that such would always be the case; and the directions which they had given to their officers, as regarded the schools of Scotland, not to interfere with the religious instruction of these schools, might not always be attended to; but their successors, under the power to introduce "improvements," might change these instructions to something very different. The provision, that the church should be informed of the appointment of the inspector, that she may state any objection to him, did not appear satisfactory as a security. He regarded the concession at length made to the church of England, that a bishop should appoint all the inspectors connected with the schools of that church, as coming short of her demand, which had been—that the appointment within each diocese should be in the bishop of the diocese; and this concession, wrung from the Privy Council by the prelates of England, coupled with the vague provision letting in the church of Scotland into the appointments, only served to make him more jealous and more apprehensive. Dr Hunter argued that, if there was danger in regard to the schools in connexion with the church of England, which had no statutory existence like the parish schools of Scotland, still greater hazard was to be apprehended in regard to the latter. The inspectors might be men of any or no religious creed; and the giving to such anything to say or do in "the godly upbringing of the young"—the very object, *par excellence*, of the parish schools of Scotland, and to which they were placed under the church—might well and justly arouse the suspicions and the fears of all, who regarded a Scriptural education as the first and foremost of duties; and looked upon it as a grievous and dangerous error to hold that, if you teach the young to read and write, and instruct them in science and literature, you do all that is necessary to insure making them good men and good citizens.

The expediency of accepting the government grant was advocated by Dr Patterson of Glasgow, on the ground
 10.
 Dr Patterson. that, where the means of teaching are kept low, both

the quality and extent of instruction given are found to be beneath what they ought to be—a fact proved by the state of schools, where the grant had not been given, as compared with those who enjoyed this aid. In the larger cities, such as Glasgow and Edinburgh, many thousands were growing up ignorant of the Bible and all religion, who, by such assistance as was now offered to the church, might be reclaimed and instructed; and he would have the church to pause before she rejected the means offered. But he would undoubtedly refuse it, if satisfied that one of the conditions of acceptance was, that the inspector should have power to prevent a single question of the Shorter Catechism being taught within the parish school. He would prefer, that the children should be allowed to remain in ignorance, as so many of them were, rather than uphold a system that would interfere with the free teaching of the Word of God. He believed, however, that all ground for jealousy and fear had been obviated, in regard to the conditions annexed to the grant as now explained. The duty of the inspector, as limited and restricted, was just to see, and to inform the government from time to time, that, as regards the parish schools, the presbyteries were doing their duty. The church ought, therefore, to accept the boon, if she would not deliver over the people of Scotland to chartism and voluntarism; and if she would discharge the great duty which belongs especially to an Establishment—"the godly upbringing of the young."

Mr Dunlop, advocate, considered a reference to presbyteries, whether the church ought to recommend the acceptance of the grant on the offered conditions, as unnecessary, as the subject had been repeatedly before the Education Committee, who had, by a great majority, decided that there was nothing in principle to prevent her doing so; and to this simple matter the whole question was reduced. He held the crown and the presbytery to have the undoubted right of inspecting all public schools; while neither of them had any right, in his opinion, over private seminaries, where of course the Privy Council required to enter into stipulations. The committee of council prohibited the inspector from reporting on the religious state of the school, and it rested with the teacher and presbytery, whether there should be

11.
Mr Dunlop.

such a report or not. There was, therefore, simply a right of inspection, without further interference provided for.

Sir George Clerk adverted to the temptations to which, under the

12.
Sir George Clerk,
Bart. proposed conditions, a teacher might be exposed to sacrifice his peace of conscience. The inspector might consider, that the reading of the Bible as a daily exercise made it a *sectarian* school, and removed it from the number entitled to the grant, and on his report the grant might be withdrawn. The teacher, having the alternative of starvation before him, might desist from having the Bible read, and the presbytery might not be able to prevent him. Let the church, he said, well consider these things, before she rashly gave her concurrence to the new plan; and let her take time to determine.

The resolution moved by Principal Dewar, that the Assembly

13.
Grant accepted. should recommend the acceptance of the grant on the conditions offered, was carried on a division of one hundred and fifty-seven to one hundred and five, against the motion of Mr Macfarlane, that the question of accepting it should be submitted, through an overture, to the several presbyteries of the church.

Since the discussion on this most important subject took place

14.
Present importance
of this question. in 1840, the questions embraced in it have not ceased to attract notice, and have again divided the Education committee, if not the General Assembly of the church of Scotland, on the expediency and safety of recommending the acceptance of the Government Grant for Education on the conditions offered. Events have occurred, giving to the views and fears of Dr Hunter still greater title to attention, than at the time when they were first brought forward. They are still entertained by the minority of the Education committee, who, along with its late highly respected and zealous convener, Dr Muir, have retired from any share in conducting its affairs, because the Assembly 1849, in accordance with the opinion of this committee, have recommended the acceptance of the public aid now offered, in favour of both the parochial and other schools under the Church's control. The complaint, however, has not been so much, that the grant has been accepted, as that the expediency and safety of

receiving it have not obtained the previous attention and deliberate discussion which the importance of the measure demanded—the very ground taken by those who constituted the minority on this question in the Assembly 1840. It must be confessed, that the Assembly 1849, before agreeing to this recommendation, did not enter at any length into the principles involved in the acceptance, and did not certainly give to it the grave and detailed discussion which it deserved. They adopted, however, a Declaration anent the Parochial Schools of Scotland, in which they set forth the rights and immunities secured by laws the most fundamental to the Church of Scotland in the matter of national education, and their determination to preserve these rights inviolate, in language not to be misunderstood, and clearly called for, in consequence of the open and avowed attempts now making to obtain the repeal of these statutes: And they of course held the acceptance of the government grant, on the terms of the Privy Council, as quite consistent with the determination come to in this Declaration, to uphold these rights and immunities in all their integrity. The question, however, recurs now, as it arose in 1840—Ought not the Privy Council, if they have no ulterior objects in view, to have extended their grant to at least parish schools of Scotland, unfettered by any inspection by officials appointed by themselves, seeing that statutes the most fundamental, and which it is questionable if the legislature itself can constitutionally repeal, have given the sole control and superintendence of these schools to the Church, and render it doubtful whether the church herself can surrender this control? Had parliament agreed to grant directly a sum in aid of the better endowment of the parochial schools, would such claims of inspection by officers of its own appointment have been attached to it? When the Church herself received such a boon, no interference with the manner in which pastoral duties might be discharged within the parishes receiving it, was ever dreamt of. These duties were not deemed the less provided for, through the superintendence of the church's own courts, that an addition to their stipends was provided for out of the exchequer. Hence a question has been raised, whether Parliament, when it placed the sum allotted for educational pur-

poses in the hands of the committee of Council, gave them anything more than mere fiscal duties to perform: And it has been held, that the Privy Council, in assuming a special legislative right, so far as to introduce a machinery into the parish schools of Scotland, unknown to the laws of the country, have exceeded their powers. It must, however, on the other hand, be kept in mind, that one of the parliamentary provisions, accompanying the grant, expressly provides for inspection; and especially bestows liberty on the Board, to introduce improvements into the schools obtaining aid; And although it may not at first sight appear easy to reconcile with this provision the regulation that the inspectors are not to interfere with the religious instruction, or discipline, or management of the schools, yet a subsequent modification of the rule seems to throw some light upon the dilemma, when it refers to the duty of the inspectors to make "suggestions;" but which at the same time may not be attended to; and in this case the grant is doubtless to be withdrawn. The great question, therefore, arising out of these provisions, and in which the Church felt so intimate an interest in 1840, still comes to be—Whether the parochial teacher is to be held at liberty to adopt the "improvements" suggested by the inspector, and on his adopting which, may depend the continuance of the grant? If he can adopt the "suggestions" irrespective of the presbytery of the bounds, what becomes of the statutory control and superintendence of that presbytery? If one of the "improvements" suggested should be the banishment of the Bible and Catechism, or of anything like instruction in them as *sectarian*, what becomes of "the godly upbringing of youth," as provided for by laws, which the Treaty of Union and the Act of Security may be held to have declared to be beyond the power of all future parliaments to abrogate? The government inspector is not, indeed, to interfere "in the religious instruction, discipline, or management of the school;" but if he may make "suggestions" as to "improvements" in any of these departments—which improvements, if not adopted by the teacher, he is to report as a fact for the information of the Council, and the grant is forthwith withdrawn—the door to the most practical interference with everything, connected with the system of teaching in the parish school, is clearly open. Those

who recommend acceptance of the Government Grant on the conditions of an inspection so limited and restricted as is that proposed, affect to regard as chimerical any apprehension that evil can enter by this door ; and they argue further that, should it arise, the grant may be relinquished. They appear to have the stronger side of the argument, who contend that, until at least the extent and meaning of the limitations are distinctly ascertained, as well as how far the escape that is furnished may be possible, should danger arise, it is the sounder policy to pause before acceptance. With the views now entertained by Statesmen of all parties, the disjunction of *religious* from *secular* instruction within the schools supported or assisted by the State, appears the policy about to be pursued. To countenance this policy were to relinquish all the grounds on which has hitherto rested the educational system of Scotland, and from which so many good fruits have been reaped ; and the jealousy, with which any measures that may ultimately lead to it was watched in 1840, and is still by many entertained, is more urgently called for at this moment (1849) than at any former period. The acceptance or non-acceptance of the Government Grant, by the schools under the superintendence of the Church of Scotland, will soon become a question of secondary importance. Measures are already in active preparation, sanctioned and supported in many quarters, and by statesmen of different parties, to sever the parish schools from the church, and to introduce the most radical changes, in other respects, into the parochial school-system of Scotland ; and every Scotsman, truly alive to the welfare of his country, must look forward to the result of these measures with at once the most lively interest, and the most justly founded alarm.

CHAPTER III.

THE STRATHBOGIE CASE RESUMED UPON ITS MERITS.—DEBATE— AND FURTHER SUSPENSION OF THE SEVEN MINISTERS.

ON the 28th May, the case of the seven ministers of Strath-
^{1.}
Strathbogie case resumed. bogie, who had been suspended by the Commission
of the 11th December, was taken up by the Assembly upon its merits. Mr P. Robertson, who again appeared as their counsel, was now contented with requesting the Assembly to bear in mind, that he held as repeated the argument, which he had employed on the competency of the Commission to pass the sentence which they had done. In regard to the citations, which his clients had received, and under which they then appeared at the bar, he was prepared to speak if called upon; but having no specific statement to make, beyond the general argument already employed, he was unwilling to take up the time of the Assembly. The ministers at the bar had been cited, he said, to answer further as might be demanded of them, beyond the sentence of suspension passed on the 11th December 1839. They had also received citations to answer in the matter of a notarial protest, taken by them for all remeid at law for injuries arising out of this sentence; and they were, moreover, called upon to say, why they should not be dealt with, for having applied to a civil court for a suspension of the sentence of the spiritual. He did not exactly know the points to which, under these citations, he might be called upon to address himself; and, with the permission of the house, he rested satisfied, in the mean time, with giving in a short written statement, setting forth the position in which his clients now found themselves; and he craved that it might be received and recorded.

The debate was opened by Mr Dunlop, advocate, who took great credit to himself and his friends for the leniency which they had all along desired to exercise towards the ministers at the bar. The purpose of the last Assembly, he said, in enjoining these ministers not to determine the matter of Mr Edwards' settlement themselves, but to refer it to the Commission, had been to relieve them from difficulties, by not allowing them to act on their own responsibility, and thus subject themselves to a civil process, should the question be carried to the civil courts. The object, in short, was to throw the responsibility upon the Commission. These injunctions, however, the presbytery had seen fit to disregard; and they had proceeded, of their own authority, so far towards the settlement of the presentee to Marnoch, in face of the judgment formerly pronounced by the Assembly. For this conduct they had been suspended, and the sentence had been held up as severe. He maintained, that if it was severe, it was, at the same time, merciful, as it was intended to prevent the ministers placing themselves in a position in which a severer censure must be passed upon them. He was astonished that Dr Cook and his friends, in defending the parties at the bar, should have appealed, as they had done, to the principles which guided our forefathers in 1751, when Principal Robertson placed the celebrated *Moderate manifesto* on the records of the Assembly, in which he denounced the conduct of those inferior courts who refused to obey the sentence of the superior, on the ground that they could not conscientiously carry them out, as "denying the first principles by which men are united in society, and establishing such maxims as would justify not only licentiousness in ecclesiastical, but disorder and rebellion in civil government." In these days the Commission sought to screen an inferior judicatory, which had refused to obtemper the sentence of the superior church court; and Principal Robertson rested the charge of their having, in so doing, gone *ultra vires*, on the ground, that as violating the rule, "that the lesser and inferior ecclesiastical assemblies ought to be subordinate and subject unto the greater and superior assemblies," the decision, from which he dissented, was manifestly repugnant to the whole spirit and system of the presbyterian government. But the ministers at the bar had not only, said

Mr Dunlop, disregarded the sentence of suspension, and persisted in doing ministerial and pastoral duties, but they had gone the length of seeking the aid of the civil court, and acknowledging its jurisdiction over ecclesiastical censures. They had even ventured to call on the Court of Session to prohibit the parties, authorised by the Commission, from preaching the doctrines of the gospel; and they had thus placed the inhabitants of the parishes concerned in a situation, in which no individual could be placed, consistently with the principles of liberty and toleration. These were the charges, under which the ministers at the bar now stood; and the house had to determine what course should be followed in regard to them. He proposed that the assembly should find, that, in violating the orders of the Commission and General Assembly, with regard to the settlement of Mr Edwards, the ministers at the bar were censurable; and, with regard to the other matters brought up, that they were liable to be proceeded against according to the laws of the church; but that, before pronouncing any sentence, and determining the nature of that sentence, a committee should be appointed to deal with them, and to report to a subsequent diet of the Assembly.

The ground taken on this occasion by Mr Dunlop betrayed the weakness of the whole fabric, which he and his friends were now attempting to rear. There was nothing in the proceedings of the Assembly 1839, in referring the Marnoch case to the Commission, to indicate, as alleged by Mr Dunlop, that its object was to relieve the presbytery of Strathbogie from acting on their own responsibility; and in this manner, as farther intimated by him, screening themselves from a civil process, should the matter go into a civil court. All this defence of the Commission, and condemnation of the presbytery, was manifestly an after-thought on the part of those who now set them up; and was, moreover, built upon the fallacy, that it was *intra vires* of the Commission to take upon itself a responsibility which the law, not even recognising the existence of such a court as a commission, had laid upon presbyteries alone. Such a responsibility as the learned gentleman spoke of, could not have been taken upon itself even by the Assembly;—the duty required from the presbytery of Strathbogie being purely a ministerial act, laid upon it by the

3.
Remarks.

statute law of the land, and from executing which no superior church authority could absolve it. It was, therefore, a fairer and more legitimate inference to draw, that the object of the Assembly 1839, in referring the Marnoch case to its Commission, must have been, that this body might, in the first instance, lay upon the presbytery an injunction, which the Assembly itself was not quite prepared to hazard.

Dr Cook opposed the motion of Mr Dunlop, and protested
 4. against the attempts made by him and others,
 Dr Cook. to identify himself and friends with all the proceedings that distinguished the *Moderate* party in other days; and, without saying whether these proceedings were right or wrong, he declared for himself, that he had never been accessory to, nor present at, a violent settlement; and would condemn to the utmost every extreme exercise of authority. He could not, however, lose sight of the element, distinguishing the present case from those to which it had been likened, that there was here an interposition *ab extra*—an interposition of the highest civil judicatory of the country, demanding of the gentlemen at the bar to take the steps they had done, as they would answer on their allegiance. It was a miserable quibble to say, that there was no order from the civil court to proceed to the trial of Mr Edwards; the declaration that they were bound to do so, was, in every honest point of view, equivalent to such an order. These gentlemen participated in the difficulties in which the Church herself felt that she was placed; and by all it was allowed that she had not yet solved the *nodus*. For this purpose she was negotiating with the government, and applying to the legislature. But, in the discharge of their duties, the parties at the bar were compelled to *act*, while the Church was *treating*; and even were they blameable, they deserved the leniency and forbearance of their ecclesiastical superiors. To these superiors they had paid obedience, up to the period when such obedience would have subjected them to the penalties of the law, from which penalties neither the Commission, nor the Assembly, could relieve them under any pretext of taking the responsibility upon themselves. This law these parties had sworn, as subjects of the Queen, to respect and

obey ; and to punish them for yielding this respect, was a monstrous and outrageous exercise of spiritual authority. He vindicated them also against the charge of having applied to the Court of Session in what related to spiritual matters. They had been suspended by a Commission from their pastoral and judicial functions, and this sentence they were warranted in disregarding by the laws of the church, until confirmed by the General Assembly itself, to which they had appealed, and of which judgment other parties competent had complained. In the face of this appeal and complaint, the Commission proceeded to supersede them in the discharge of duties, laid upon them by the law of the land ; and they were warranted and called upon to seek protection, under these circumstances, from the civil courts. He therefore moved, “ That the General Assembly, having taken under consideration the case of the seven ministers of Strathbogie, who had been suspended from the office of the ministry by a sentence of the Commission, which sentence remained in force, and also the circumstances in which they were placed, are of opinion, that as the said sentence was pronounced on these ministers for having conscientiously yielded obedience to the positive instructions of the supreme civil courts, in what was stated by these courts to be a civil matter, and in the peculiar circumstances and unresolved difficulties of the case, they are not, on this account, to be considered censurable ; and the General Assembly, therefore, remove the sentence of suspension, and restore them to the full exercise of their ministerial functions.”

The Reverend Dr P. Macfarlane admitted the difficulties and perplexities in which the Strathbogie ministers were
 5.
 Dr P. Macfarlane. placed ; but he could not allow, that the element of interference by the civil court justified the course which they had pursued. This doctrine, he argued, would amount to nothing less than the renunciation of the authority of the church courts in every instance, where they should chance to come into collision with the civil. But, while holding, as he did, that Jesus Christ had established an authority in the Church, separate from the authority of the civil magistrate, his rule and principle was, that obedience to the civil magistrate was not to be yielded, when the faith was entertained that such obedience was contrary to what was due to

the great Head of the Church. He thought, also, that as the declarator of the law had not yet been followed up by an order to obey it, the ministers at the bar ought to have paused in yielding this obedience; and as the church was engaged in solving the *nodus*, this furnished an additional reason for delay. He denied that the interdict which the ministers had obtained was simply sought for their own protection. It was an interdict to prevent the minority of the presbytery from acting as directed by the Commission. He believed that, in acting as they had done, the parties at the bar had been of opinion, that it was their duty to submit to the laws of the land; and, therefore, he did not altogether despair of a happy result to the conference now proposed. They must be satisfied, he said, of the desire of the Assembly to deal with them with all lenity and gentleness; and they would, he hoped, be the more disposed to come to a conference with any committee, which he trusted might terminate in the removal of the suspension.

Dr Paull of Tullynessle said, that if the proposal of a committee,
^{6.}
 Dr Paull. to confer with the brethren at the bar had come
 unaccompanied with a strong sentence of condemnation, none would have gone into it with greater pleasure than himself. But he could not impute blame to ministers for having acted precisely as he felt that he would himself have done, had he been placed in the same circumstances.

The moderate party had been called upon by Mr Dunlop to
^{7.}
 Dr Bryce. abide, in the case before the Assembly, by the same
 principles which had guided their great leaders in
 1752. He had exulted not a little in throwing down the gauntlet, which he had found in the well-known Reasons of Protest by Principal Robertson in the Linlithgow case of these days; and Dr Bryce said he had no hesitation, for one, in accepting the challenge, and taking up the gauntlet. But he also had *his* gauntlet to throw down, derived from the same days. The learned gentleman had called upon the moderate party to give effect in the case then before the house, to the principles of their great leader in other times, and he had been loudly cheered by his friends around him. He would surely admit a reciprocity in the reasoning employed, if others should call upon him and his party to follow the example of their

leader in the times alluded to, and give effect in the present instance to the principles then laid down by Dr Wishart in his *Answers to the Reasons of Dissent against the proceedings of the Assembly of 1751*, for not censuring the brethren of the presbytery of Linlithgow, in refusing to execute the sentence of a former Assembly; and he begged the house to keep in mind, that it was not the sentence of a Commission, of very doubtful character and powers, but of the Assembly itself, which the presbytery of Linlithgow had disregarded. The language of Dr Wishart, speaking in the name of his party on the conduct of those who had disobeyed their ecclesiastical superiors, was this—"Nor can we think any man is to be constructed an open transgressor of the laws of Christ, merely for not obeying the commands of any assembly of fallible men." "Men are not," says he again, "to be accounted transgressors of the law of Christ, because they will not obey the orders of any fallible assembly, when it is declared by them, that it is a conscientious regard to the will of Christ himself, according to the best of their understanding of it, that led them to this disobedience." The Strathbogie ministers believed, that when they were giving to Cæsar the things that were righteously Cæsar's, they were giving to God the things that were God's. It could not be denied, that they were giving to Cæsar the things which Cæsar claimed as due to him; and if they resisted the right of the church, to lay down to them the limits of Cæsar's powers, they were only paying respect to what is enacted for their guidance in the Confession of Faith and other standards of the church of Scotland. Under this conviction they acted. Would it be said that Dr Wishart and the popular party of 1751 would have condemned them? But Mr Dunlop would speak, perhaps, of subscriptions and engagements of obedience and submission to the judicatories of the church; and what said his friends of old to this argument? "Our subscription and engagement," says Dr Wishart in his *Reasons of Dissent*, "to the judicatories of the church, is with the express limitation of its being in the Lord." And what was the meaning of "in the Lord"? Let the evangelicals, he said, of 1751 determine. "That is," say they, "in such cases only as we judge

not to be disagreeable to the Lord, of which every man has an unalienable right to judge for himself, as he will be answerable to the Lord—a right, which he cannot give up to any man, or society of men, because it is not merely his privilege, but his duty.” Without pledging himself to their unqualified reception, Dr Bryce asked for the gentlemen at the bar the benefit of these doctrines from the other side of the house ; and, until they were ready to give it, he protested against the justice or the applicability of the argument of the learned member, drawn from the obligation of the moderate party to tread in the footsteps of Principal Robertson, as Mr Dunlop had painted them. But he must further say, that the present position of the moderate party had been altogether misrepresented under this argument. They were not standing up for the right of the *minority*, to disregard with impunity the authority and orders of the *majority* of any court, or justifying the disobedience of the inferior to the commands of the superior judicatories of the church. They acknowledged, that it was the imperative duty of the majority or court to enforce obedience upon the minority, if everything like order and discipline was not to be subverted ; and they were already calling upon those, who now constituted the majority in the church, to do so in regard to themselves ; knowing well, that if the church persisted in the course she was pursuing, the question which she was really raising—Whether the majority or the minority within the church were to be recognised, as constituting the church of Scotland in the eye of the law?—must come to be tried, and disposed of by the competent tribunal out of doors. The acts of the alleged suspended ministers of Strathbogie would inevitably come in civil matters into collision with the doings of the remanent members, who had now assumed the functions of that presbytery, under the authority of the church ; and from witnessing two bodies in the north, each calling itself the presbytery of Strathbogie, there would soon be seen two bodies in the south, each maintaining that it was the Church of Scotland.

The prediction here hazarded by Dr Bryce, that the acts of the
 8. alleged suspended ministers of Strathbogie would
 Prediction verified. inevitably come into collision with the doings of the

remanent members, was afterwards fulfilled, when these ministers proceeded to bring one of the minority to discipline for contumacy, in not appearing to answer a charge of dispensing ordinances, in a neighbouring parish, without the consent of the minister of that parish. That the result of this process, if the contumacious minister had persisted in refusing to acknowledge the authority of the presbytery, would have been deposition, and consequent loss of the temporalities, cannot be doubted, had not the *Secession*, in which the offending member joined, taken place.

The Rev. Dr Hunter, of the Tron church, Edinburgh, acknowledged, that he was much perplexed in coming to a judgment in the case before the Assembly. He approved of the resolution of last Assembly, that every disputed case should be delayed; and he blamed the parties at the bar for not conforming to this resolution. He admitted the difficult position in which the interference of the civil courts placed them; but, as no specific time had been fixed for their doing the duty exacted from them by these courts, in regard to the presentee to Marnoch, they had a latitude of discretion, of which they had not availed themselves. On the other hand, the ecclesiastical court gave them no latitude; and, if this had been represented to the civil court, he thought it would have found attention there. But still he was willing to extend to them very great sympathy; and he felt the sentence of the Commission suspending them, to be harsh and severe. They had been at once denuded of power to govern; and, what was far worse, of authority to minister to their people in holy things. If the people of their parishes thought the Commission right in suspending them, then their respect and usefulness were most materially injured. If they thought the Commission wrong, confidence in, and attachment to the church must be weakened among them. These feelings had been fomented by the injudicious conduct of some, who had officiated in the parishes of the suspended ministers; and this he was compelled to say, while he agreed perfectly with those who blamed these ministers for having dragged the ecclesiastical into the civil courts, and obtained interdicts against those who were sent officially to their parishes, under the authority of the Commission.

When Dr Hunter imputed blame to the presbytery of Strathbogie for not having attended to the injunction of the Church, that all disputed cases under the Veto Act should be referred to the Assembly, he forgot that this injunction applied only to such cases as should arise after the injunction passed; and was not made applicable to either the case of Auchterarder or Marnoch, already in the civil courts. It was, moreover, an injunction which, however much relied on afterwards to serve a purpose, had been tacked, as by accident, on a resolution to re-enact and re-transmit the Veto Act regulations; and, so little was it esteemed an essential rule, that the very next year these regulations were retransmitted without its accompanying them.

Sir George Clerk could not concur in either of the motions before the Assembly. The first prejudged the case, by finding the ministers liable to censure; the second held them free from all censure. There was much, he said, in their conduct, of which he could not approve; and he thought, that the appointment simply of a committee to confer with them, might lead to a conciliatory judgment. This suggestion not having been followed up, the Assembly divided on the motions of Mr Dunlop and Dr Cook; when the former was carried, on a division, by two hundred and eleven to one hundred and twenty-nine.

The motion of Dr Cook, in opposition to that which proposed anew the suspension of the Strathbogie ministers, displayed a degree of caution touching the claims now put forward by the Church, which, it must be confessed, almost bordered on injustice towards the parties at the bar of the Assembly. It sought for these parties a release from the suspension which had overtaken them, and with which they were again threatened, on account of "the peculiar circumstances, and unresolved difficulties" of the case; for it was in respect to these, that the Assembly was called on by Dr Cook to find, that the seven ministers were not censurable. Had this amendment met the case with the same breadth and boldness which were afterwards seen to be necessary, the conduct of the parties at the bar would have been explicitly approved of, as

demanding from them by the duties they owed to the Church, of which they were ministers, and to the State, of which they were subjects. The interference of the civil courts would have been distinctly received as justifying and calling for the course which they had pursued; and the doctrine would have been embodied in the amendment, that in yielding the obedience to Cæsar, which they had done, they had yielded obedience to Christ. When Dr Hunter and Sir George Clerk — proceeding still farther in their hesitating course, than Dr Cook had done—distinctly blamed the Strathbogie ministers, as they did, for having discharged their functions, notwithstanding their suspension by the Commission, they necessarily assumed that, up to a certain point at least, it was the duty of these ministers to disregard the interference of the civil courts, and to refuse obtempering their decrees; and so far they went along with Mr Dunlop and Dr P. Macfarlane. They also held, of equal necessity, that the ministers of Strathbogie were at liberty to refuse the preaching of the word, and the dispensation of ordinances to their parishioners, demanding them at their hands; and that the plea, that they were so ordered to do by their ecclesiastical superiors, however illegally, would—up to some indistinct and undefined limit—justify them in neglecting the duties for which they were paid by the State; and in this they probably went further than either Mr Dunlop or Dr P. Macfarlane, who would not allow obedience to Cæsar, at any stage, in a matter where obedience to Christ was pronounced by the church to be an antagonistic obligation. The assumption of these duties by those to whom the laws of neither Church nor State had conceded them, must have also found an advocate in Dr Hunter, and those who went at this time along with him; as he agreed in holding the Strathbogie ministers blameable for not having countenanced and permitted this illegal irruption into their parishes. If, of course, those “who were sent there officially,” as Dr Hunter expressed it, had a right to be there, the whole question was at an end; and the suspension was justly incurred and legally imposed; and he ought to have felt as little “perplexed,” in sanctioning what the Commission of the 11th December 1839 had done, and in renewing the censure, as the most “violent mode-

rates " had in condemning it. It was this manner of dealing with great principles, at the outset of this controversy, which led the church into so many difficulties. A vague sort of hope seemed at this time to be entertained by not a few, that, by conceding to the majority, that the ministers, whom they were persecuting, had erred in some particulars, that majority might be disposed to deal the more kindly with them in other things; and that, by this sort of mutual concession, peace might be restored to the church. How vain was the imagination a very short period sufficed to show.

On the day after the above sentence was passed, Dr Cook, at
 13.
 Reasons of dissent,
 by Dr Cook. the head of a very large body of ministers and elders, gave in Reasons of Dissent, which demand the very greatest attention; and the importance of which did not fail at the time to attract the notice, and, doubtless, to rouse the apprehensions of those who now guided the councils of the church. In these reasons, the protesters denounced the suspension of the seven ministers by the Commission of the Assembly of the 11th December, and the authorising the missionary deputations to officiate in their parishes, as assuming a power which by the laws neither of Church nor State belonged to it; and they held that it was incompetent for the General Assembly itself to give a legal and constitutional force and effect to these judgments. They further protested against the deliverance come to, as under any circumstances inconsistent with the prudence and charity of an ecclesiastical court, and tending directly to counteract the great purposes of a gospel ministry; and they recorded their solemnly entertained opinion, that the suspended brethren had, in all their conduct, paid respect to the clearest principles of reason, and the express injunctions of revelation; and that, moreover, to have acted otherwise would have been to violate their duty, as good citizens and faithful subjects. They regarded it as highly unbecoming and inconsistent, that obedience to the law of the land should be held censurable by the supreme judicatory of a church protected and endowed by the State; and solemnly professing their own determination to adhere to the established church, they deeply lamented that so many of their brethren had adopted a course which must ultimately render it necessary to withdraw themselves from the Establish-

ment, and in this manner weakening the influence of the national church, and creating much spiritual destitution. This remarkable, and, as it proved, truly prophetic dissent, concluded with calling in question the constitution itself of the Assembly, which had passed the sentence protested against, on the ground that parties had joined in it, who were not legally parochial ministers, and had no title, either under the statute law of the church or the civil law, to take any part in the decisions of the General Assembly, which affect the secular and civil rights of the ministers of the church of Scotland. It was now obvious, and indeed admitted on both sides of the house, that so opposite were the general principles set forth by the dissentients, and those which the church had declared, and on which she was acting, that the now existing majority and minority could not possibly continue to be members of one and the same church. It was openly announced by Mr Dunlop, one of the leading members among the majority, that from that day a great schism in the church had taken place; and that she was now brought into circumstances the most solemn. Nor can it be doubted, that the learned gentleman drew a faithful and correct picture of her situation. Had he, and those who acted with him, adopted a downrightly honest and consistent course; and had they meted out to the dissenting minority the same measure of justice which they were dealing forth to the Strathbogie ministers, they would at once have suspended them from their pastoral and judicial functions, instead of contenting themselves, as they did, with appointing a committee to answer their reasons of dissent. This would have brought to immediate issue the great question—whether the majority or minority in the Assembly constituted the church of Scotland as established by, and known to, the law of the land; and many of the evils afterwards so much deplored would have been obviated. But however clearly they must have seen that to this issue things must come at last, they had not as yet prepared the people to sympathise with them in the movement, or to share in its consequences; much less had they as yet secured a body of ministers, so deeply pledged and publicly committed to their principles, as to be obliged to follow them in the *secession* which, by this time, they must have been contemplating as far from improbable, or so

large as to give an air of nationality to the *coup-d'état*, when it should actually take place. It was, no doubt, likewise deemed expedient and politic, that in the end the majority should appear as the driven from the Establishment, by the refusal of the legislature to recognise principles which the Church maintained to be accordant equally with her own laws and those of the State; and in this manner enabled to speak of the event as a *disruption* of, not a *secession* from, the church of Scotland. The courts of law were also, by this time, pretty effectually shut against them, but the political arena still offered some chances of ultimate success; and the government, staggering in its seat—the statesmen, eager to grasp the seals of office, might equally be gained over to their views; while a strong popular demonstration in their favour, which might be got up by means of a well-plied agitation, and the prospect of a wide-spread secession from the Established church, might peradventure concuss parliament itself into a concession of their principles.

On the last day of the Assembly, the committee appointed to confer with the seven ministers of Strathbogie, gave in their report. This report stated the belief of the committee, that, in acting as they had done, these ministers had not intended any disrespect to the church judicatories, but were influenced by the conviction, that they were bound to submit to the judgments of the civil courts; and, from the candour and frankness displayed by them at the conference, the committee were unwilling to abandon the hope that, upon more mature reflection, they would still acknowledge their regret at having acted in opposition to the deliverance of the Assembly and its commission. A “Statement” in writing, laid before the committee, was also brought up; and in this “statement” the parties declared, that, as ordained ministers of the church of Scotland, they were fully sensible of the obligations incumbent upon them, towards her ecclesiastical judicatories. They had not forgotten that they had signed the Formula, and had owned the presbyterian government and discipline, now so happily established, as founded on and agreeable to the word of God, and that they had bound themselves to maintain and defend the same. These obligations they were at all times anxious to fulfil; while they held it, at the

14.
Report of the
committee of
conference.

same time, to be their duty, as ministers of the church of Scotland established by law, to give due effect and obedience to the decrees of the supreme civil courts of the country; and, for having taken this course, they felt it impossible to acknowledge that they had justly become the objects of censure by the church.

On being asked at the bar of the Assembly, the ministers declared,
 15. that they still adhered to the "Statement" which
 Deliverance of the Assembly. they had given in to the committee; when the Assembly was moved to take into consideration, and adopt the suggestion, made by the committee of conference—namely, that the sentence of suspension passed on the 11th December, by the Commission of that date, should be continued; that the ministers should be cited to appear, personally, before the commission of August, and if they then continued contumacious, and refused submission to the church courts, that they should be served with a libel for this contumacy; and that the commission should proceed, until the case was ripe for the next Assembly. A very interesting and important debate took place upon this suggestion.

Dr P. Macfarlane, the convener of the committee, in giving in
 16. the report, drew the attention of the Assembly to
 Dr P. Macfarlane. several important statements made at the conference by the Strathbogie ministers. They had explained the circumstances, which precluded their informing the committee, appointed to meet them at Aberdeen, that they could not attend them, in sufficient time to prevent that committee leaving Edinburgh;—thus giving to their conduct an appearance of disrespect toward the commission and its deputation, when nothing was further from their thoughts. They also gave assurance to the committee, who had just conferred with them, that, from the beginning, they had never entertained the most distant intention of proceeding in the ordination of Mr Edwards, until after the meeting of the General Assembly; but they thought they were bound, without delay, to take him on trials, to ascertain whether he was qualified; and it was their purpose, all along, to give every opportunity to the people of stating objections against his settlement. Beyond this, the reverend convener stated, that they could not be prevailed on to proceed, or give any assurance that they would obey the

injunctions laid upon them by the church; and hence, the committee felt it their duty to propose, that the sentence of suspension, which it appears they still held them as under, should be continued; that they should be cited personally to appear before the commission of August; and, if they then continued contumacious, and refused obedience to the church courts, that they should be served with a libel for that contumacy; and that the commission should proceed until the case was ripe for the next General Assembly.

The counsel for the ministers was heard as a party under the
 17. report; and he contented himself with stating, that
 Counsel heard. while it did not belong to him to anticipate how the Assembly would dispose of this report, it was his duty to inform the house, as instructed, that his clients, after full and prayerful consideration, felt bound, as ministers of Christ, to adhere to the course which they had pursued—paying respect and obedience to the laws of the land. He would, however, take it upon him to say, that the position in which they were placed, in opposing themselves to the judgment of the church courts, was not only one of pain to them, as they deeply felt it to be, but must be regarded as a grievous misfortune to the church herself. If the sentence, about to be pronounced, followed up that already given out, and attempted to be executed by the Commission, enough had occurred to satisfy him, that the Church must speedily be brought into such a collision with the State, as must entail the greatest evils on the Establishment.

The adoption of the report made by the Committee was opposed
 18. by Dr Cook, who, in the most solemn manner, im-
 Dr Cook. plored the Assembly to consider the very serious and perilous position in which its reception would place them. He warned them, that no government could allow the ecclesiastical authorities to punish any of the lieges of the Queen, for yielding obedience to the decrees of her Majesty's courts of justice. Those who counselled such opinions might hold their theoretical opinions on the spiritual independence of the Church; but he begged of them to look to the consequences of practically carrying out these opinions as proposed, and to ask themselves if such a system of disorganisation could be tolerated for any length of time. If the

issue should be the placing matters, by the legislature, on the footing on which he and his friends had maintained, since 1834, that they had always constitutionally stood, he asked if all the embarrassments in which they were involved would not be removed? If, on the other hand, the judicial authorities were driven to enforce the law, as they had declared it in the cases that had arisen, and the majority should still adhere to the doctrines and principles on which rested the proposition before the house, what else was to be anticipated but a fearful schism, which all must contemplate with dismay? If the legislature recognised the powers in the church, which the courts of law had refused to her, and should allow to her a power to carry out her judicial economy, without being subject to control of any kind, and without the possibility of any civil authority interfering, he, and those who held the administration of the church, since the Revolution, to be founded on very different principles, might deplore the change; but, applying the great principle of yielding obedience to the law of the land, they would not leave the church of their fathers, unless, said the reverend doctor—"unless the tremendous powers, which may be exercised under such an act, are to drive us out." "We are attached," added he, "to the church of our fathers, and we will stand by it, as long as we are permitted." In answer to the argument, which sought to justify the proceedings of the church, on the ground of a compact entered into between two co-ordinate authorities, Dr Cook asked, what an Establishment was, but a means employed by the State to prevent, not to punish crime; and, what object could be more worthy of the attention or care of the State? But let the Establishment become the instrument of teaching disobedience to the laws, and to what result could we look but to its abolition?—not merely as failing to reach its legitimate object, but as conducting to the very evils it was intended to prevent. The Established church of Scotland had hitherto nobly answered its great purposes, in diffusing a knowledge of the great truths of Christianity among thousands, and bringing them under the power and guidance of holy and heavenly motives;—proving itself the most powerful system of preventive jurisprudence ever adopted in any country. "For what purpose," he demanded, with a warmth

and fervour that bespoke the hold which the subject had taken of his whole heart—"for what purpose are ministers and members of this Church now running the risk of depriving themselves of that which is the ark of our safety, and the glory of our country? It is not for any great principle or doctrine, on which there is no dispute whatever; it is not for any of those cardinal points of faith, in regard to which there is no difference of opinion; but it is because peculiar significations are attached to particular words, while a great section of the church doubt whether this sense ought to be attached to them." There was a sense, in which the independence of the church and non-intrusion were to be understood, and in which, if they were abandoned, he should see nothing but the ruin of the church. He maintained, however, that he and his friends upheld these principles, in the sense and meaning of the fathers of the church of Scotland. Others had obtained a new light upon these points; doubts had been consequently raised; and, while these remained confessedly unresolved, he would have the shield of the church thrown over the excellent men at the bar, of whom the Report, while it demanded their punishment, because they would not receive these new lights, bore testimony, that they were pious, excellent, and conscientious ministers. On these grounds he moved that the Assembly should remove the suspension from the parties at the bar, and appoint a committee, to aid and assist them in the perils and difficulties to which they were exposed.

Mr E. Monteith, advocate, and sheriff of a Scottish county,
 19. stepped forward on this occasion, in an able and
 Mr E. Monteith. elaborate speech, to vindicate those, who were maintaining the privileges of the church, from placing themselves in opposition to the law of the land. The task fell into very appropriate and legitimate hands, and was executed with not a little zeal and earnestness. He admitted that, if there was no principle involved in the question, the position taken up by the church, in regard to the ministers at the bar, would be indefensible; and, believing that these gentlemen were actuated by purely conscientious, and not by contumacious motives, in all the steps that they had taken, he would place them on higher ground even than Dr Cook had claimed for them. He, Mr Monteith, also bowed with

the utmost submission to the decisions of the House of Lords and the Court of Session. The judgment of these courts had been, that, as to civil effects, it was the duty of the church to admit a presentee; and the church, he contended, had obeyed this judgment, when she gave up all claim to the temporalities—the civil effects involved in the question. He had not a doubt that, if the church should be obliged to follow up the sentence of suspension with one of deposition, the civil courts would refuse to acknowledge her sentence as to civil effects. This he considered as a necessary consequence from the decision in the Auchterarder case; and what, he asked, remained in this case, but that each court should follow out its own course? He maintained what Dr Cook, he argued, appeared to deny, that there was a distinction between civil and spiritual matters; and he held this principle to be clearly brought out, under the case of a parishioner being refused a token to the communion table; an act which, he might easily show, injured his character; yet, he would put it to any member on the other side of the house, if he would justify a party going to the Court of Session for redress under this refusal; and he would ask, if the act of *Ordination* was less sacred than admission to the communion; or if the Court of Session had any more jurisdiction in the one case, than in the other? He was aware, he said, that he would be told that the issue, in the present case, was not the act of *Ordination*, but the act of *taking on trials*. But was not this the first step to ordination? and in what statute, he would ask, was the word “trials” to be found? Presbyteries were to “receive and admit.” When the church courts, said the learned advocate, were told to “receive and admit, according to the discipline of the church,” the statutes in no respect violated the independence of the church; but “if the Court of Session, going beyond the statutes, ordered the church court to *take on trials*, as a first step to ordination, the case was altered.” The civil court might find the right to the temporalities forfeited, if they held the church to have departed from the compact; but he trusted the church would at once relinquish her endowments, that her jurisdiction *in spiritualibus*—her inalienable rights in regard to communion and ordination, might remain entire and inviolate; and he was sure no churchman on the other side

would maintain a different proposition. He had heard, almost with abhorrence, that the church was one of the branches of preventive jurisprudence;—that the ministers of the church were to be considered in no other view, than as so many police-officers. Such a proposition must uphold Popery in Ireland, and Hindooism in India. His view of the principle of an Establishment was, that it belonged to every government and legislature, to promote the true religion of Jesus Christ by every means in their power; to consider, not what was the sense of the majority of the nation, but what was the truth; and, in deciding what was truth, every man was to act within his own sphere, and on his own responsibility. He admitted, indeed, that, in a free country, there could probably be no Establishment, except that of the majority; but this Establishment, he maintained, was to be promoted, not as a means of aiding the civil policy of the State, but as a means of reclaiming lost souls to the fold of the true Shepherd. He held the question of Religious Establishments over the world, to be involved in that then before the Assembly; but he would rather see the Church of Scotland humbled to the dust, than her spiritual independence laid down at the feet of the civil power.

The argument of Mr Monteith, that the church escaped from the charge of disobeying the law, when she maintained and attempted to enforce an ordinance of her own, which that law had pronounced invalid, by surrendering the temporalities bestowed upon her by the State, was met by the reply, that these temporalities were not hers to surrender; and that, moreover, the demand made upon her by the administrators of the law had been, simply and solely, to take the presentee upon trials; and in answer to the learned gentleman's assertion, that in no statute of the realm could he find the words to "take on trials," it was asked, if in the interlocutor of the Court of Session there was any reference to "the temporalities," or to their surrender, as an act implying obedience to the judgment given forth. When he maintained, that to take on trials was a spiritual act, he was met at once from the other side of the house by the doctrine, that it was, in every sense of the words, a civil right; and that every parishioner had a civil right, which he might enforce by a civil process,

20.
Reply to Mr Monteith.

to be taken on trials by his minister and kirk-session, whether he is qualified or not to partake in the ordinances of religion, just as every presentee had now been found to have the same right to be taken on trials, whether he is qualified or not to administer ordinances.

Dr Simpson was unable to concur in either of the motions before the house. He held the question before him to be, how, in consistency with the principles held by the Church, was he to pronounce the most merciful, light, and lenient sentence on the individuals at the bar? The motion of Dr Cook, of course, lost sight, according to him, of these principles altogether; that of Dr P. Macfarlane called for too severe a mode of vindicating them. He, therefore, proposed that the suspension, to which the ministers of Strathbogie should be subjected, should be confined to their judicial and administrative functions, as members of church courts, but not to their ministerial and pastoral duties. While he thought the sentence pronounced by the Commission of the 11th December competent, he did not approve of it; and he deeply deplored the effects by which, it was well known, it had been followed over a large district of the church. If the object was to prevent the presbytery proceeding to the induction of Mr Edwards, their judgment should not proceed farther; and he moved in effect, that within these limits it should be confined.

The motion of Dr Simpson was seconded by Mr Pringle, M.P., who, while he maintained that the church was bound to vindicate her authority over all its members and office-bearers, saw, in the present case, very strong grounds for her doing so in the mildest and most lenient mode possible.

Dr Robertson, Ellon, regarded the proposal of Dr Simpson as leaving the Assembly in the midst of all its difficulties, and as not likely, if agreed to, to obviate the risk of collision with the civil courts, or to gain the entire confidence and concurrence of the ministers at the bar. It did not follow, according to his view, that, admitting the act to be censurable, which these ministers had perpetrated, they were them-

selves to be pronounced censurable, as they had been, when the question was last before the Assembly. They had acted conscientiously, and had, on all hands, been acquitted of contumacy and disrespect to the ecclesiastical courts. If there was an offence, it was only an error of opinion conscientiously entertained; and, on this ground, he asked, if the house would not be disposed to extenuate the offence. It was to this point, according to him, that Dr Cook's motion went, as it found that, in the peculiar circumstances, they were not to be visited for the offence. He, Dr Robertson, did in his conscience believe, that if the Assembly removed the censure, and sent the brethren back to their parishes in the full exercise of all their functions, they would consider the course which they ought to take, and that, short of offending their consciences, they would endeavour to bow to the decision of the house.

In this very important debate, Principal Lee took at once the
 24.
 Principal Lee.—
 Mr Dunlop. high and unambiguous ground, that by the law and constitution, not more of the State than of the Church, the ministers at the bar had only done what they were bound in duty to do; and he warned the Assembly of the consequences of driving them to neglect or violate this duty. Mr Dunlop, in noticing the argument employed by Dr Robertson, could not admit that a conscientious conviction was a ground of not inflicting censure. The church, he said, did not call on these parties to do anything which they thought sinful, but to desist from doing what she regarded in that light. The question with them was not, obey or disobey; but obey, or relinquish their ecclesiastical position. He would have been ready, however, to have extended to them the greater forbearance, had they stood before the Assembly as penitents; but they were not in this position; and, even on the principle of preventing injury, he held the church bound to continue the suspension from ministerial and judicial functions. But the church was now called upon to inflict punishment, and he saw no undue severity in that proposed, as the parties at the bar might escape from it, if, in the month of August, they put themselves in the position which the church had demanded.

Sir George Clerk confessed, that the report of the committee, who

had conferred with the seven ministers, had greatly modified the
 25. opinion which he had formed of their conduct. He
 Sir George Clerk. found from it that they had acted in discharge of a
 duty, which they felt themselves bound to perform, to the law of the
 land; and although the explanations which they had given did not
 amount to an assurance that they would alter their opinion, they
 were such as ought to remove the displeasure of the Assembly. He
 strongly objected to the motion of Dr P. Macfarlane, and con-
 tended that it would be better to proceed at once to the sentence
 of deposition, than leave the parties in the anomalous position in
 which this motion placed them. He urged on the Assembly to do
 nothing that might interfere with their obtaining a declaratory act
 from the legislature, setting forth and securing the privileges of the
 church. Except in this quarter, he saw no peace or safety for the
 Establishment; but, on the contrary, the prospect of another wide-
 spreading secession from her communion.

The debate was closed by Dr Mearns, who, regarding the time
 26. for argument as passed—the time for action arrived
 Dr Mearns. —plainly told the Assembly, that not only did he hold
 the same sentiments as had been avowed by the gentlemen at the
 bar, but, should the period ever come, when he should be placed in
 the same circumstances, he saw not how he could act otherwise,
 than had these worthy and excellent men. In the mean time, he
 felt satisfied, that these ministers were defending the principles for
 which our Reforming fathers had stood up;—while the Assembly,
 in censuring and condemning their conduct, were called upon
 to return to the very doctrines, in matters spiritual, on which the
 Church of Rome rested. The legislature was now refusing to
 acknowledge these doctrines; and if our Reforming fathers had
 avowed them in 1560, the church would never have been esta-
 blished by the State, as the “true and halie kirk.”

A division was demanded by Dr Simpson, on the motion for a
 27. mitigated degree of punishment, which he had sub-
 Deliverance of the Assembly. mitted, when this motion was put against that of Dr
 Cook. There appeared for the former thirty-two, and for the lat-
 ter fifty-nine. When the vote was taken on the proposal of Dr
 Cook, as against that of Dr P. Macfarlane, the motion finding

the Strathbogie ministers not to be censurable was lost on a division of one hundred and sixty-six to one hundred and two.

By the decision to which the General Assembly now came, the church was fairly committed to that course which ultimately conducted to the Secession in 1843. It will be admitted, that the dominant party in the Assembly could have followed no other, without surrendering the principles on which the deliverance of the Commission of 11th December had been justified, and on which the competency of that commission, already disposed of, had been rested. The attempt of Dr Simpson, to obtain a more mitigated censure, merited the very slender support which it received within the Assembly ; and after the openly avowed and honest declaration of the Strathbogie ministers, that they felt bound to obey the law, as it had been made known to them by the civil tribunals, it must have been plain, that to have tied up their hands, as Dr Simpson proposed, by ecclesiastical authority, could in no manner have led to the issue which he no doubt most honestly and ardently desired. The process of the law would have still followed the ministers, and it would have been no reply, that they had ceased to have judicial duties to perform. The answer would have been, that they had ministerial functions to discharge, while they were members of the presbytery of Strathbogie, and these imposed upon them by statute ; and of which the General Assembly could not denude them, any more than it could take upon itself the legal responsibility of neglecting this duty. Nor could these ministers have felt, that they were released from the moral obligation to obey the law, as good subjects, by the exercise of such an authority over them by the church, as Dr Simpson seemed to think would, if put forth, lead them to this conclusion. If they could have reached it through such a process, they would evidently have never been in the position which they occupied. As such a proposition could not consistently have been gone into, by those who so far held the same opinions, on non-intrusion and spiritual independence, as Dr Simpson himself, much less could it have found favour with the moderate section of the Assembly. The present debate had marked out, more clearly than ever, the line of demarcation between the majority and minority in the church, and gave fearful

28.
Remarks on the
Deliverance.

portent, that ere long a *Schism* the most deeply to be regretted was inevitable. To have expected, as Dr Robertson appeared to do, that, should the censure already imposed be removed, the ministers of Strathbogie might come to see their conduct in such a light as would avert the evil, was to indulge hopes for which there appeared no reasonable grounds. The suggestion assumed, what they could not be expected to allow, that they had been in error in the course which they had pursued;—a confession which, if made, would have amounted to a condemnation of those who had stood by and defended them, as pursuing the course required equally by the laws of the State and the Church. The motion submitted by Dr Cook, and supported by the moderate party, did, in substance, if not so directly as it might have done, proclaim their creed, that the civil magistrate is supreme in matters ecclesiastical, to all the extent to which, in this case, he had put forth his authority;—for it held the Strathbogie ministers not to be censurable, in yielding obedience to edicts which, of course, it assumed as legally and constitutionally given forth. It is true that this, the real and important ground of difference between the parties now dividing the church, was not put so prominently forward in this motion, as in the Reasons of Dissent given in against the former deliverance of the Assembly. The motion spoke of the difficulties and embarrassments by which the ministers had been beset, and very justly called for an acquittal on this ground; thus enabling those who regarded the matter in the light in which Dr Robertson saw it, and were anxious to run counter, as little as possible, to the sentiments entertained on the other side of the Assembly, to support it—at the sametime not forsaking the higher ground, on which, while unwilling as yet to proceed so far, it was every day becoming more evident that they must take their stand. The motion, which became the judgment of the Assembly, did as clearly uphold the supremacy of the ecclesiastical courts, in the question that had arisen; assuming at once that it would have been as meritorious in the Strathbogie ministers to have disobeyed the edict issuing from the civil courts, as it was sinful in them to disobey the injunctions of their ecclesiastical superiors. The bold and honest avowal of Dr Mearns, who spoke the mind and determination of the moderate party, that, in the same circumstances, he would fol-

low the same course, as the ministers at the bar had pursued, must have opened the eyes of all to what awaited the Establishment. From this moment, the question of a secession from its ranks became merely one of time; the decision now come to by the Assembly, and the ground of high spiritual jurisdiction assumed, as vested in the church courts by scriptural and inherent rights, had settled the principles involved in it.

The case of Mr Edwards, presentee to Marnoch, was next taken up by the Assembly, when this gentleman appeared
 29. Case of Mr Edwards. at the bar, according to the citation which he had received. It was moved and seconded, "That the commission be instructed to serve Mr Edwards with a libel, for violation of the injunctions which the commission of last Assembly had laid upon him, against presenting himself for trial before the presbytery of Strathbogie, and that he be cited to appear before the August commission, with certification." An amendment was moved, "That no sufficient information had been laid before the Assembly, to warrant the serving of Mr Edwards with a libel, and that he be dismissed from the bar." This amendment was not pressed to a division—a dissent against the deliverance being entered by Dr Cook and others.

It is not a little remarkable that, in all these proceedings, the
 30. Remarks. moderate party in the Assembly should have occupied so low a ground of argument, as that on which they were generally found. In the present case, it was merely moved by them, that the Assembly should find that there was no sufficient ground for serving Mr Edwards with a libel; whereas what was due to this gentleman, and to the principles held by the moderate party, was to have declared, that, in all the steps which the presentee to Marnoch had taken, he was not only exempted from blame, and beyond suspicion of delict, but highly to be commended, as standing up for the sound Protestant principles on which the Reformed church of Scotland was founded. Mr Edwards, had he been disposed, had good ground to complain that, on this occasion, he had not received all the countenance and support from the moderate and constitutional party, to which he was entitled.

On closing the Assembly, the Moderator (Dr Mackellar) took
 31. occasion to advert to the great questions on which
 Moderator's Speech. it had been divided, and to declare his perfect
 concurrence with the great constitutional and Christian principles
 of the Church's independence, and separate and spiritual jurisdiction,
 under the sole headship of the Lord Jesus Christ, and with the prac-
 tical application which had been made of these principles in the pro-
 ceedings of the Assembly. In this address, the moderator touched
 upon a question which, during the debates, had been but slenderly
 alluded to, but which, in truth, regarded the very essentials of the
 controversy that had arisen. He could not, he said, admit for a
 moment the distinction sometimes taken between the majority
 of the General Assembly and the Church of Scotland; and
 he maintained, that, when the Assembly is rightly constituted
 and conducted, it is the appointed and sole organ, that gives utter-
 ance to the mind of the whole church. The doctrine, thus broadly
 laid down, was not altogether accordant with the theory of the con-
 stitution of the church of Scotland; and Dr Mackellar seemed to
 overlook that, so far at least as legislative acts are concerned, no
 edict or deliverance of the General Assembly has any force, until it
 has been sent down to presbyteries, under the Barrier Act, for their
 approbation. They are the "organ that gives utterance to the mind
 of the whole church." In setting, however, as he did, the seal of his
 approbation on the course pursued by the Assembly, the moderator
 necessarily pronounced a sentence of condemnation on the doctrines
 and principles maintained by the minority; yet was it not the less
 manifest, that when at length the question should go, where alone
 it could be finally settled—before the civil magistrate—it might be
 found, that this minority did, in fact and law, constitute the Church
 of Scotland known to the law. In the mean time, the departure of the
 Chair from the ordinary tenor of a parting address, could not fail
 to suggest the position in which the Moderator of the Assembly
 might have been placed, towards the body over which he presided,
 had that chair been occupied by Dr Hill; and had the reverend
 Professor proceeded to tell the house, that he deprecated and de-
 nounced the decisions to which the Assembly had come, as illegal and
 unconstitutional in themselves, and cruel and tyrannical towards a

body of pious and excellent men, guilty of no other offence than obeying the law of the land, as laid down to them by its highest judicatory. It would seem difficult to have denied his right, so to express his conscientiously entertained opinions; and it was felt by many, that the example set on this occasion, by the retiring Moderator, might, with all manner of propriety, have been avoided. It is, indeed, but justice to Dr Mackellar himself to state, that he admitted he was wandering out of his province, in the notice he took of subjects on which the Assembly had been so greatly divided. When he spoke of the "agitation" which the church question had created over the country, as "a most salutary agitation," he certainly forgot the effects produced by it in more districts of the church than one; and altogether overlooked—what must, however, have been to every one very evident—that when the minister of one parish entered that of another, to denounce the pastor to his parishioners, as guilty of trampling on the crown-rights of the Redeemer, because he saw not the question of non-intrusion and spiritual independence in the same light as Dr Mackellar, he was neither acting a brotherly nor a Christian part; and when such an intruder sought to sever the sympathy that subsisted between a neighbouring clergyman and his flock, that the people might the more easily be enlightened on the subject of non-intrusion, it certainly proclaimed a very strange obliquity of vision, to see in this anything of a "salutary" nature.

CHAPTER IV.

ASSEMBLY 1841 — DUKE OF ARGYLE'S BILL—REVIEW OF PROCEEDINGS IN THE COMMISSION OF 1840.

WHEN the General Assembly of 1840 adopted the resolutions rejecting the bill of Lord Aberdeen, as laid upon their table, they reappointed the Non-intrusion Committee, substituting the reverend Dr Gordon of the High Church, Edinburgh, as convener, in the room of Dr Chalmers. Instructions were given to this committee, to watch over the progress of any measure, that might be introduced into parliament, for the settlement of the Scotch Church question; and to bring this question before the legislature, in any way they might see fit. A Deputation from the committee was soon afterwards despatched to London, with directions to attain, if possible, a settlement on the basis of either the Call or the Veto; or, in the event of this being unattainable—and with special reference to Lord Aberdeen's bill, which, although rejected, was not, it appeared, altogether thrown overboard—to attempt such an arrangement as, under this bill, would secure to the Church courts, in clear and distinct terms, full liberty, in the exercise of their judicial functions, to give effect to their solemn convictions of duty, in refusing to intrude presentees on reclaiming congregations; and also protect these courts from all civil interference and control, when, in any particular case, they should act in this manner. Should there appear sufficient grounds to believe, that the leading men in parliament would concur in such a measure, and that it would pass both houses during the existing session, the Deputation had power to declare, that they thought it a mode of settlement with which

the Church might be satisfied; while they could not, however, involve her, as a party, in passing it.

The Earl of Aberdeen, on the rejection of his bill by the General Assembly, did not press it to a second reading in the House of Lords; and Mr Campbell of Monzie, the member of parliament for Argyleshire, soon afterwards appeared in the field of legislation on Scottish Church affairs, giving notice, in the House of Commons, of a bill to achieve their settlement. The second reading of this bill, which went, in effect, to legalise the Veto Act of 1834, was postponed, at the request of her Majesty's government, who appear, at this time, to have entertained the hope of being able themselves to introduce a satisfactory measure; and when, at length, it was about to be moved, a difficulty in point of form presented itself, in respect that, being a measure touching the rights of the Crown, as patron of church livings in Scotland, it could not be introduced without the consent of her Majesty's government. This consent was withheld, and the bill of Mr Campbell was withdrawn.

The honourable member for Argyleshire was not left alone in his attempts to procure peace to the Church of Scotland. The Duke of Argyle, on the 6th May 1841, introduced a bill, with this truly patriotic object, into the House of Lords, which deserves particular attention. The noble Duke guarded himself, in introducing his bill, by stating, that it was framed more by others than himself; and that, in truth, he took its principles and provisions very much on warrant from others. Many circumstances afterwards transpired, to induce the belief, that his Grace's consent to this measure had been with some difficulty obtained;—an inference that appears warranted, from his withdrawing it, so soon afterwards as he did. The bill, which he laid before the House of Lords, gave to the congregation the right of absolute rejection, and did not even permit any objections to be called for; and, consequently, precluded presbyteries from judging on the merits or sufficiency of the grounds of rejection, even in connexion with "the circumstances of the parish,"—"a regard to its spiritual interests," or to the "number and character of the objectors." It did not pretend to be declaratory of the law, as it

2.
Lord Aberdeen
withdraws his Bill.
—Mr Campbell of
Monzie.

3.
The Duke of Ar-
gyle undertakes
legislature.

existed, under which aspect it might have met with the consideration of the then subsisting government; but it went clearly to alter the law and constitution of the Church of Scotland, which Lord Melbourne stood pledged to maintain. It also touched this law, as regarded the rights and privileges of the Crown; and it was consequently constitutionally inadequate to introduce it, without the previous consent of her Majesty. It was, indeed, entitled "An act to regulate the exercise of patronage in Scotland;" and it held out the bait of transferring the *jus devolutum* from presbyteries to the Crown, in cases of private patrons neglecting to present qualified persons within the legal time; but, in subjecting the presentees of the Crown to the same provisions as others, it threw every living in Scotland ultimately into the hands of the Church courts. At the same time, with singular inconsistency, it allowed a proof, by competent evidence, that the dissents offered to a presentee proceeded from factious or malicious motives.

It may, perhaps, afford a key to the bill of the Duke of Argyle, if certain transactions, that took place between the
 4.
 A key to this Bill. Deputation of the Non-intrusion committee and the Earl of Aberdeen, in April 1840, are kept in view. His Grace of Argyle's measure, when brought forward, bore all the marks of the modification of Lord Aberdeen's bill, which had been pressed upon his lordship by Dr Buchanan of Glasgow and Mr Hamilton. This modification appears to have been regarded, at the time, as a very considerable stretch of discretion on the part of the Deputation, as it went to substitute the presbyterial for the popular veto; but the deputies held themselves justified in proposing it by the opinion of Dr Chalmers, as stated in his correspondence with the Noble Earl; and they assured his lordship, that the substitution of the principle of a *liberum arbitrium* to the Church courts, in place of an absolute veto to the people, was one on which the earnest attention of the Church had throughout been fixed; while at the same time it was admitted, that it was a mode of giving effect to the Non-intrusion principle, which was least favourably regarded by the Church in general; and that the Deputation itself always considered it as liable to great practical difficulties. Such, however, was the confusion by this time introduced into the terms employed, that the

Deputation clearly understood something very different from Dr Chalmers, when they enlightened the Earl of Aberdeen on the subject of the *liberum arbitrium*. According to them, it meant that the Church courts should be left free, to exercise an unfettered judgment as to the circumstances in which it might be proper to proceed to ordination and induction. Dr Chalmers' view of the *liberum arbitrium* was, that presbyteries were to act judicially, in deciding for themselves upon objections offered to a presentee; that they should not be obliged to state the reasons of their own judgments, or the grounds of the people's objection; but to rest their decision, if they saw fit, on their own apprehension of the character and extent of the opposition, and their duty under it. So far Dr Chalmers disregarded the principle of the Veto, which precluded presbyteries from at all acting judicially, and only gave them a ministerial duty to perform—that of registering the edict of rejection by the people; but he clearly shut them out from rejecting presentees, on the mere ground of a certain number and character of parishioners dissenting. Lord Aberdeen was as much opposed to the amendment of Dr Buchanan, as to that of Dr Chalmers, and all attempts to prevail on him to introduce it were ineffectual. When his lordship retired, as he did, from the field in 1840, the mode of settlement suggested by Dr Buchanan—under, indeed, very material modifications—appears to have been pressed upon the Duke of Argyle, by that section of the Non-intrusionists, whose views on the question of patronage and popular rights were not so extreme as those of Dr Cunningham and his supporters. By this latter section of churchmen it was evidently very coolly received; and the attempt to introduce it seems to have produced no little confusion within the committee. Nor is it a matter of wonder that they should have felt greatly relieved, when at length, on the termination of Sir George Sinclair's endeavours to bring about a settlement, they escaped from the difficulties and inconsistencies in which the *liberum arbitrium* of Dr Chalmers and Dr Buchanan had for a time involved them.

The preamble to this ill-advised and ill-concerted bill, laid down

5.

Preamble to the Bill. that the exercise of the rights of patrons, under the Act of Queen Anne 1711, “ had given rise to

sundry evils and inconveniences ;” which evils were held to be still existing, as it went on to say, “ which inconveniences it is expedient for the future to obviate.” This assertion parliament was not only called upon to affirm, in the face of the fact—by this time universally admitted—that, for some time past, “ the exercise of the rights of patrons” had been most considerate, as regarded the Christian privileges of the people, and most happy, as respected the selection of parish ministers ; but it was asked to sanction a law, under which a minister might enter on his charge only through the door of a previous proof, that his future parishioners were men utterly devoid of principle and character ; and this was the mode now proposed to obviate “ sundry evils and inconveniences” accompanying the settlement of vacant parishes in Scotland ! Presbyteries were to sit in judgment, not on the allegations of those who might not concur in a Call,—not on the truth or reasonableness of their objections, if any were offered, but on their motives ! and the presbytery was to be the party calling these motives in question, and entitled to demand that the objectors should prove that they were pure and conscientious ! By what process they were expected to do this, the bill did not pretend to point out ; but to acknowledge, by statute, the right of the people to dissent, and then to let in the presbytery to judge of the motives influencing this dissent, was certainly the most inconsistent machinery imaginable. Nor was it easy to reconcile it with the pretence held up that these ecclesiastics were struggling for the rights of the people. But it was further objected to the bill of the Duke of Argyle, that it would effect greater changes than this upon the law and constitution of the Church of Scotland. It went to countenance the doctrine that, besides the presentation of the patron, a Call from the people was also necessary to constitute the title of the presentee. This was plainly implied in the provision made by the bill, that a certain dissent should amount to an insufficient Call ; and of the sufficiency or not of the Call thus clearly implied, the Church courts were alone to judge. Hence, under this measure, should it ever pass into a law, it was argued that, even where there were no dissents offered, the Church might still refuse to take on trials, on the ground that there was not a

sufficient Call,—a power which it was found, by this time, necessary that she should possess, as the Veto, in its working, was not in all cases able to keep out the presentee obnoxious to the dominant party in the Church. In the cases of North Leith and Dalkeith, a dissent from the Call, as now proposed by the Duke of Argyle's bill, would have served the purposes of that party in excluding the presentees ultimately settled, and against whom a competent dissent under the Veto could not be obtained. The question—Is the Call sufficient or not? would have been raised, and, of course, very easily disposed of. By the Veto Act, “the male heads of families, being communicants,” were alone vested with the right of dissent; but, by the present bill, “the major part of the male parishioners, or members of the congregation,” were clothed with this privilege—a provision regarded at the time as intended to obtain, by a side-wind, a legislative sanction to the *quoad sacra* ministers who had been introduced into the Church courts, and to whom parochial districts had been assigned, solely under the Church's own authority. But perhaps the most strange provision of this bill was that, which took the *jus devolutum* from the Presbytery, and gave it to the Crown. As the law had hitherto stood, it was a wise and fair provision that, if the patron neglected to present a qualified person within a reasonable time, the right of doing so should fall into other hands; and that he, *pro hac vice*, should, on account of his neglect, forfeit his right to nominate. But it was not the patron's fault that the people dissented from, or refused to concur in the Call to his presentee; and why, it was asked, should he be punished? If the being assented to by the people constituted a requisite qualification, which a presentee must possess before he could be nominated, how was the patron to discover this before presenting him? But, in point of fact, the patron had, in some instances which had just occurred, given the people the very man for whom they had petitioned; and this man had been dissented from! Was the patron, in this case, to forfeit his right, on the ground that he had not presented a qualified person within the term limited by law? And if such a forfeiture of his rights, for such a cause, was to overtake the private patron, on what principle, it was further asked, did the Duke of Argyle's bill exempt the Crown from a similar

forfeiture, under similar circumstances? This it was not, perhaps, very easy to explain—except, indeed, on the supposition, which was hazarded without scruple, that by such a bait of exemption the opposition of the most powerful of all patrons might be obviated.

A candid and attentive examination of the Duke of Argyle's bill, and of the arguments by which it was defended on

6.
Bill of the Duke of
Argyle—its basis
and provisions.

the one hand, and opposed on the other, must satisfy every one, that it was founded on a principle destructive of the basis on which an ecclesiastical establishment can rest; and that this principle had equally little respect to everything like judicial authority, as vested in a Church court,—save and except, indeed, in the matter of judging of the motives of those in whose hands the whole power was apparently lodged;—the very ground, of all others, that ought to have been held most sacred by both the civil and ecclesiastical judicatories, if the real spiritual independence of the Church was to be regarded. By this bill, as has been seen, the dissent of the people was imperative on the Church courts, who were not entitled under it to judge of any objections offered to a presentee, or to call for any reasons sustaining these objections. Yet, by the artful manner in which the matter of a positive Call was mixed up with the dissents, and the power given to the Church courts to investigate motives, and to say, moreover, what was or was not a sufficient Call, the very rights given to the people in virtue of their unqualified veto were, as has been seen, taken away, and the whole matter placed in the hands of the Church! The plain language, therefore, of all these proposed enactments amounted to this:—"the policy, constitution, and powers of the Established Church are to be, as they have been, fixed and defined by statute—for we are now seeking one statute to be repealed by parliament, and another to be enacted; and we demand, that the new law shall provide, according to what we hold to be at once a scriptural and inherent right, that the interpretation of its meaning and import, when any question arises, or under any alleged abuse of its provisions by the ecclesiastical judicatories, shall be in these judicatories alone!"

It did not fail to attract attention, at this time, that while the

dominant party in the Church, in seeking an alteration in the existing law, as regarded the settlement of ministers, acknowledged the existence of this law, and the consequent obligation to obey it, they were actually punishing the Strathbogie clergymen for no other offence than this obedience!—an obedience yielded by them, not because generally—perhaps more remotely—laid down in the Auchterarder case, but in consequence of decrees by this time going out personally against themselves, under penalties from which no other parties could relieve them. Nor did it less escape observation, that while the dominant party were seeking a statute maintaining lay patronage, at least in name; and while the Duke of Argyle was informing the House of Lords, on authority, that the Church did not wish for its abolition,—and, moreover, was reading a letter from Dr Candlish, in which that reverend leader admitted, that the passing of his Grace's bill would diminish the probability of this abolition—the same parties were denouncing lay patronage to the people of Scotland, as utterly indefensible, unreasonable, and unscriptural! In no part of their negotiations, to obtain a measure for the settlement of the Church question, had the Non-intrusion committee got more entangled in inconsistencies and contradictions, than in the matter of the Duke of Argyle's bill. His Grace, who appears to have been greatly misled in introducing this measure, and who must soon have discovered that it would prove ineffectual in restoring peace to the Church, withdrew it before it reached a second reading; and that even after it had received the approbation of a large majority of the General Assembly of 1841.

The General Assembly again met at Edinburgh on the 20th May 1841, when the Reverend Dr Robert Gordon, one of the ministers of Edinburgh, was chosen Moderator. Upon the calling of the roll, and before the filling of the chair, the meeting directed the names of the representatives of the Seven suspended ministers of Strathbogie, whose commissions had been lodged, to be expunged; on which a protest was taken by the ruling elder from that presbytery. By this time there existed two separate bodies within the Church, each calling itself the Presbytery of Strathbogie; namely, the minority of the presbytery, as

7.
Inconsistencies
fallen into.

8.
Assembly 1841.
Strathbogie Com-
missions.

it stood before the Marnoch question arose, and composed of the four members, to whom the General Assembly had intrusted all the powers and duties of the presbytery ; and the majority, consisting of the seven ministers, who, upon obtaining interdict from the Court of Session of the sentence of suspension issued against them, had proceeded in everything, as if still in full possession of all their powers presbyterially ; and had consequently elected their members to the present General Assembly. On the rejection of the commission given in by the majority, that of the minority of the presbytery of Strathbogie was sustained ; and two days afterwards a notarial instrument in the names of the seven ministers, along with duly attested copies of an interlocutor, obtained by them from the Lord Ordinary, on a note of suspension and interdict, were formally served upon the Moderator and clerks of the Assembly, prohibiting the parties, who had been chosen by the minority of the presbytery of Strathbogie, from taking their seats as members of the house.

The case of the Reverend Mr Wright of Borthwick, which had been sent by the last General Assembly to the presbytery of Dalkeith, was next taken up on an appeal by that gentleman against the deliverance of the presbytery finding the charge of heresy proven. It was moved and seconded, that before proceeding to a judgment on this case, a committee should be appointed to afford Mr Wright an opportunity of making any admissions or explanations, which he might have to give, in regard to the grievous errors with which he was charged. This motion was met by an amendment which, on a division of one hundred and ninety-five to eighty-five, became the deliverance of the Assembly, that Mr Wright should forthwith be deposed from the holy office of the ministry. The process against this clergyman, who stood eminently high as a scholar and a divine, had commenced under very singular, and somewhat suspicious circumstances. The works, in which the alleged heresies were found, had been for twenty years before the Christian world ; had obtained a very high reputation for the author ; and their orthodoxy had never, during that period, been called in question by his

9.
Mr Wright de-
posed.

presbytery. On the controversies, which had at length begun to divide and distract the Church, Mr Wright had opposed himself to the Non-intrusion party in the presbytery of Dalkeith; and the belief was very general, that to this opposition he owed the notice which was at length taken of his works, which, many of his judges admitted, had lain upon their tables as family instructors, and from which they had derived no little profit and gratification. That there were passages in these works requiring explanation, was not denied by those who opposed the extreme censure so summarily inflicted on their talented author; and the refusal to grant a committee, to hear the explanations and admissions, which it was understood Mr Wright was ready to make, was generally regarded as a very harsh and unbrotherly procedure.

After the rising of the General Assembly 1840, a very large
 10.
 Address to Lord
 Aberdeen. body of ministers and elders over the Church had
 come forward, in an address to Lord Aberdeen, and
 had expressed their concurrence in the bill and its provisions,
 which his lordship had introduced into the House of Lords, and
 the Church had rejected; and their conviction, that if pressed forward and passed into law, it would tend powerfully to restore peace to the Church of Scotland. This procedure out of doors was, as a matter of course, met by a counter movement on the part of the opponents of the measure; and signatures were obtained to a declaration, that the bill was subversive of the rights of the Church, and the privileges of the Christian people, and if it became law, would only more and more endanger the purity and safety of the Church of Scotland. It may not be easy to say how far, in these circumstances, the bill, if pressed by Lord Aberdeen, would have been passed by the legislature; but the noble promoter had seen it expedient at this time to withdraw it. It cannot, however, be denied, that the movement, out of doors, of clergymen and elders, to reprobate and defeat the vote to which the General Assembly had so solemnly come, although headed by some who were loudest in maintaining the rights of the Church courts, indicated anything but becoming respect for ecclesiastical authority; and tended most directly to

loosen all the bonds of order and discipline on which any ecclesiastical polity can rest.

A case which afterwards attracted not a little attention, in connexion with the claims set up by the civil courts, ^{11.} *Cambusnethan case.* was now brought before the Assembly. The minister of Cambusnethan had been libelled and found guilty, by the presbytery of Hamilton, of several acts of theft; against which sentence he appealed, first to the Synod of Glasgow and Ayr, and then to the General Assembly. The presbytery had discovered, that the appellant did not mean to prosecute his appeal, not having furnished himself with the requisite extracts, and they applied by petition to the Assembly, craving that Mr Livingstone should be cited to appear personally at the bar. The prayer of this petition, irregular as it had been, was granted; and on the day appointed under the citation, counsel appeared at the bar for Mr Livingstone, when the Assembly determined, that protestation should be allowed to be taken by the presbytery, that their sentence had become final, and that it should be remitted to them to execute the same.

Upon the Assembly granting the prayer of the presbytery, and ^{12.} *Interdict applied for.* citing Mr Livingstone to its bar, that reverend gentleman saw fit to apply to the Court of Session, to prohibit the presbytery and the Assembly from proceeding further, on the ground that the sentence, pronounced against him, had been delivered by a court incompetently and illegally constituted, inasmuch as *Quoad sacra* ministers sat in it. The Court were unanimous in refusing to grant the interdict, contenting itself with ordering answers to be given in to the note of suspension. On this occasion the Lord President expressed his doubts, whether Mr Livingstone was entitled to the remedy he sought, having all along sat with the *Quoad sacra* ministers, and acquiesced in their proceedings; while several of the judges held, that if such an interdict were granted, it would annihilate the proceedings of all the Church courts, since the passing of the Chapel Act. No answers having been given in by either the presbytery of Hamilton or the General Assembly to the note of suspension, the Lord Ordinary, on the 24th August, discharged the presbytery and Assembly from proceeding further in the case.

The August Commission of 1840 had resolved to serve a libel on

13. Mr Edwards, the presentee to Marnoch, in consequence of his having applied to the presbytery of Strathbogie to be taken on trials, contrary to the injunctions of the General Assembly ; and of his having also sought from the civil courts for interdict and suspension of the sentences of the Church. A committee had been then appointed to prepare this libel ; and when it was moved to serve it upon Edwards, an amendment was brought forward, to the effect that inasmuch as Mr Edwards had been only prosecuting those rights to which as a British subject he was entitled, and of which no ecclesiastical authority could strip him, and had therefore been guilty of no offence, civil or spiritual, the Commission saw no cause for serving him with this libel. This amendment was not pressed to a vote. The libel having, of course, been duly served under the orders of the Commission, and the case having come again before the November Commission of the same year, written defences were given in, entitled “ Answers and objections of the Rev. John Edwards to a pretended libel raised against him at the instance of some person or persons unknown.” These answers, thus designated, were advised and preferred by Mr John Inglis, one of the most distinguished pleaders at the Scottish bar ; and they clearly indicated, that now at length the strife was to be carried out on ground, on which there could be no compromise, if there was no surrender. As must have been anticipated, the Commission refused to hear these answers even read ; when it was moved and seconded, that the objections to the libel should be repelled, and the same found relevant, and the proof proceeded in at the March Commission, when Mr Edwards was cited to attend. An amendment, that the libel be found not relevant and dismissed, was lost, on a division of 75 to 2. In March the matter was again taken up, when evidence was laid before the Commission, that Mr Edwards had been guilty of the acts charged in the libel, which was found proven ;—two dissentient members of the Commission obtaining leave to enter their protest against the deliverance. The case was referred to the General Assembly, and Mr Edwards cited to appear at its bar.

While these proceedings were going forward in regard to the presentee to Marnoch, the presbytery of Strathbogie had proceeded to his ordination and induction, as minister of that parish, amidst a scene of considerable riot and turbulence on the part of the people, by whom the members of the court were not a little interrupted in the discharge of their duties.

14.
Ordination and
induction of Mr
Edwards.

Before, however, proceeding to the ordination and induction of Mr Edwards, the presbytery had again been brought into the Court of Session by the presentee. They had by this time complied with the interlocutor formerly obtained by him, that it was their duty, under the statute, to take him on trials; and they had found Mr Edwards, on their consciences, highly qualified for the pastoral charge of the parish of Marnoch. He now instituted an action in the civil court, to have it found and declared, that the presbytery were "bound and astricted to receive and admit" him to the benefice, and cure of souls; and this action was raised against equally the majority of members under alleged suspension by the Church, and against the minority, acting as the presbytery, under the authority of the General Assembly. In this action the majority gave in a minute, intimating their readiness to implement any interlocutor, ordaining them to proceed in the induction of Mr Edwards;—the minority, at the same time, resisting and opposing the issuing of any such judgment. It was after hearing adjudged by the Court of Session, that the presbytery were bound to receive and admit Mr Edwards to the benefice and cure of the parish of Marnoch;—an order, which the majority immediately proceeded to obey.

16.
Presbytery un-
justly charged.

The interlocutor, which had found the presbytery bound to take Mr Edwards on trials, clearly implied that, if pronounced qualified, he must be inducted; and no further measures in the Court of Session appeared necessary, for the guidance or warrant of the presbytery. The step taken was, however, deemed expedient, in order, that no doubts should rest around the matter,—that in everything the presbytery did in this settlement, they were following out the provisions of the law, as interpreted by its highest tribunal. A clamour was, indeed, raised

against them, as going into court predetermined to do the act, to compel them to do which they were brought into it. But the propriety of the step which they took cannot be called in question; and the charge brought against them, of running before the requirements of the law, in doing despite to the authority of the Church, had no foundation in truth. The outcry raised against the Court of Session, in issuing the present decree, was equally without grounds; nor can it be imagined for a moment, that those who indulged in it, could have failed to see, that it was not one step further in advance, towards secular usurpation in matters spiritual, than had been the interlocutor, finding the presbytery bound to take Mr Edwards on trials.

On the settlement of Marnoch taking place, a body of the
 17. parishioners appeared as petitioners and com-
 Settlement of Mar- plainers at the bar of the Assembly 1841; and, upon
 noch declared null and void. their petition and complaint, the Assembly rescinded the whole proceedings complained of; declared the same and the pretended settlement at Marnoch, to be null and void; and found that Mr Edwards was not, and never had been, a minister of the gospel, or minister of the parish of Marnoch. The Assembly further directed the presbytery of Strathbogie, meaning thereby the remanent minority of that body, to proceed towards the settlement of Mr Henry, the second presentee to Marnoch, according to the rules of the Church. An amendment, to dismiss the petition and complaint, was negatived without a division, several members entering their dissent against the deliverance. It was then moved, seconded, and carried, that Mr Edwards be deprived of his license, as a probationer, to preach the gospel. An amendment, declaring that Mr Edwards be found to have done nothing censurable, was negatived without a division;—Dr Cook and others dissenting.

It was very characteristic of the recklessness, alike of forms and
 18. of common justice, which marked the whole proceed-
 Recklessness of these proceedings. ings of the dominant party at this period, that while, by the sentence which they now gave forth, they declared Mr Edwards not to be, and never to have been, a minister of the gospel, they afterwards attempted to punish parties, who had received the communion from his hands, as having taken the solemn

ordinance from one who had been deposed from the office of the holy ministry. The offence, in the particular case now alluded to, would have dwindled into a minor delict, had it been charged, as in consistency it ought to have been, as that of receiving the elements from hands which the Church had never empowered to distribute them. But by the time, that the reigning faction were driven to carry out the discipline of the Church, farther than they expected or could have wished, a regard to everything like consistency had been lost sight of. Active preparations were then making for the accident, which they began to foresee, of their own demission of their *status* as ministers and elders of the Established Church; and while they possessed the power, which their existing majorities gave them, they exercised it with the less scruple; and the more openly overleapt the forms of the Church, and the limits of common sense, in dealing with their Moderate brethren.

On the 27th May, the General Assembly proceeded to take up the case of the Strathbogie ministers, on which public attention had, by this time, become intensely fixed, in consequence of the proceedings which have now been narrated. The sentence of suspension issued by the General Assembly of 1840, had been, in its turn, suspended by the Court of Session; execution of it had been interdicted, and the interdict had become perpetual. These interdicts and suspensions had been regularly intimated to the Moderator, and the Commission of the former Assembly; and, at a previous diet of the Assembly now sitting, the same intimation had been given to all parties interested, and, consequently, every plea of ignorance, as to the state of the question in the civil courts, had by this time been taken away. The Church had seen proper to shrink from trying the question, how far these interdicts had been competently issued, and had allowed the several interlocutors of the civil court to pass in absence; proceeding, in this case, as if no such barriers had been in her way. She appeared determined, at this time, to escape the charge of dishonesty brought against her in the Assembly 1839, when, after pleading in the Auchterarder case, she refused to abide by the award of the very umpires to whom she herself appealed; while on the ground which she had taken up, of having, under the law, a co-ordinate jurisdic-

19.
1841. Strathbogie
Case. Review of
proceedings.

tion with the civil courts, she could not submit the questions that had arisen to the Court of Session; or, by pleading before it, admit its supremacy. The only party against whom she felt and acknowledged that she could not set up a claim of co-ordinate authority was the State itself—the *Summa Potestas*, as represented in the legislature. But how the Church could waive this claim, as towards the legislature, or feel that it would be unbecoming to appear in the attitude of maintaining it, when resisted in this quarter, and at the same time uphold it, as against the organs through which the legislature speaks and acts, it was not, indeed, very easy to see. The only shape, however, in which she now acknowledged the civil courts, was to found upon the fact of their having been applied to, a charge against the ministers of Strathbogie, of disobedience and contempt towards their ecclesiastical superiors, inferring the highest censures. This charge the Commission had put into the shape of a libel, which had been duly served on the seven ministers, and found proven and to answer which they had been cited to appear at the bar of the Assembly. The acts, for which they stood indicted, were referable to the proceedings, which followed the deliverance of the Commission of 11th December 1839, and that which the Assembly 1840 had pronounced; and consequently, as afterwards alleged, the proceedings for which the majority had then been suspended, formed no count or dittay in the present indictment, being regarded as *res judicatæ*, already disposed of. Under these sentences the Strathbogie ministers had been suspended from all their judicial and ministerial functions; and, from what they regarded as the injustice and illegality of these judgments—from this “abuse,” as they accounted it, of the “government and discipline of the Church”—they had applied for redress to the civil magistrate—in this case the Court of Session—who, by the Confession of Faith itself, part and parcel of the statute-law of the land, was bound to “take order” that such “abuses” should be “removed or remedied.” This redress they had obtained, so far as the sentences complained of had been, in their turn, suspended, and their execution interdicted, until the question should be decided on its merits. And under this protection from the civil magistrate, so far as it could be so called, the ministers of Strathbogie had proceeded in

the discharge of all their duties and functions, as if the sentences of the ecclesiastical courts had never been passed. This conduct, on their part, constituted the crime for which they were now indicted, and was set forth in the first count of the libel. The other alleged ecclesiastical offences, for which they were now called to answer, were the acts of presenting the notes of suspension and interdict to the spiritual courts, intimating to them the interlocutors prohibiting execution, which they had obtained; and causing these interlocutors to be served upon the parties, against whom they had been granted; when, in consequence of no appearance on the part of the Church, the interdicts had been declared perpetual; and the question of law so far set at rest, that the sentences of suspension by the Commission of 11th December 1839, and the General Assembly 1840, were found to be illegal and *ultra vires*; and the passing of these sentences, and attempting to carry them into execution, as had been done, to constitute an “abuse” in the government and discipline of the Church, which the civil magistrate was required by the Confession of Faith to remedy or remove.

The ministers of Strathbogie had failed to appear personally
 20. at the Commission of August 1840, although they
 Proceedings in the August Commis- had been cited to do so; but, through their agent,
 sion 1840. they had given in a declinature of the Commis-
 sion's jurisdiction in the premises. Upon this it had been moved
 and seconded, at that Commission, that the seven ministers were
 contumacious in disobeying the citation of the Assembly; and
 that the same should be reported to the next General Assembly.
 These ministers had indeed stated, in the minute given in by their
 agent, that their non-appearance had not arisen from any disrespect
 to the Church courts, but from their belief, that they were bound to
 yield obedience to the supreme civil courts in the matters, in which
 they were now conforming themselves to the decrees of these
 courts. In these circumstances, it would clearly have been as
 disingenuous as nugatory, to have taken any steps that indicated a
 recognition of the jurisdiction claimed by the Church courts in the
 same matter;—a jurisdiction, demanding a course of procedure, on
 their part, directly opposed to that which the civil courts had laid
 down as their duty; and hence the course pursued, on this occa-

sion, by the ministers, was generally allowed to have been that which honesty and consistency dictated; and the count of the libel charging them with contumacy was afterwards withdrawn. Recognising this ground as fairly pleadable by the ministers, it had been moved, as an amendment to the motion first submitted to the Commission, that they were not to be held as contumacious. This amendment was negatived without a division. It was then moved that, in obedience to the instructions of the Assembly, the Commission should resolve to serve the seven ministers with a libel, and that a committee to prepare the same should be appointed. By the same parties, who had in the Assembly opposed the remitting of this case to the Commission at all, a counter motion was brought forward and lost, on a division of one hundred and eighty to sixty-six, "that the Commission saw no cause to act upon the instructions of the last Assembly, but resolved simply to report the whole matter to the next meeting of that venerable body, for re-consideration; and that, in the anxious hope, that means in conformity with the law of the land, and the constitution of the Church, might be devised for declaring, by a sentence of the Assembly, that the above-designed ministers are in the full exercise of their ministerial and judicial functions, and putting an end to the unhappy collision now existing between the ecclesiastical and civil jurisdiction."

This motion on the Moderate side of the Assembly fell, as usual, very much short of what the principles, which they had espoused, called upon them to propose;—a forbearance, however, which so far reflected credit on that party, as manifesting a sincere desire not themselves to proceed to extreme measures, nor to drive their opponents into such a course. The motion to serve the seven ministers with a libel, ought certainly to have been met by an amendment, distinctly approving of their conduct, in the steps which they had taken; and at the next stage in the process,—that of serving the libel, which had by this time been prepared—such an amendment was brought forward.

Voluminous and elaborate as was the indictment now ordered, it was remarkable, that only a few hours elapsed between the appointment of the committee to prepare it, and its presentation to the Commission—proving, beyond a

21.
Remarks on the
amendment.

22.
Preparation of the
libel—libel served.

doubt, how fully matters were concocted by the leaders in these transactions, before coming under discussion at all in the Church courts. When the motion was made to approve of, and to serve the libel now prepared on the parties, it was met with a counter-motion in the following terms: "That in respect that this libel, as now raised and laid upon the Commission's table, is substantially erecting into a *crime* what in all the clergy of the Established Church of Scotland is a *duty*—viz., the discharge of their statutory functions; the protection of their civil rights in the civil courts of the country, when invaded in any quarter; and obedience to the law when declared by these courts—refuse to approve of this libel, and dismiss the same." It was attempted to shut out this amendment from being moved, on the ground that the Commission was acting ministerially; and in serving the libel, just doing what the last Assembly had enjoined them to do: and that, therefore, no argument could be raised on, and no objections heard against the course which they were pursuing. This attempt was successfully resisted, on the ground, that while the Assembly had directed a libel to be prepared and served under circumstances, which had certainly arisen, the question, whether the libel brought up by the committee was that which the Commission ought to adopt, was an open question, to be judicially disposed of. The decision to which the Commission came, upon this point, was clearly a just decision; but some surprise was excited, that the reverend member, venturing to bring forward an amendment in the terms in which the present was conveyed, should himself have escaped censure. The November Commission, after having heard counsel in support of the defences put in on the part of the Strathbogie ministers, found the libel prepared by the August Commission to be relevant, on a decision of ninety-one to fifteen. This Commission then directed the proof to be proceeded in, at the next meeting in March, and cited the defenders to appear at that meeting.

The ministers of Strathbogie did not appear personally at the
 23. March Commission. Their agent, however, under
 March Commission. authority from his clients, intimated, that they admitted the truth of all the facts set forth in the libel; when the question was taken up how far, in the absence of the parties, this declaration

could be held sufficient ; and it was proposed that, in order to obtain their personal statement, the Commission should adjourn to Huntly, situated in the centre of Strathbogie. This proposal was opposed, on the ground of its being calculated to increase the agitation and excitement already prevailing in that part of the country ; and ultimately it was agreed, that the Commission should adjourn for ten days, again to meet at Edinburgh, to receive the personal admission by the ministers to the facts stated in the libel ;—it being provided that, if they did not attend at that diet, the Commission should then meet at Huntly. At the adjourned Commission, held at Edinburgh, the ministers did not attend personally ; but their agent handed in a paper, signed by each and all of them, containing an admission of the facts stated in the libel, which paper was ultimately received as a judicial admission of these facts ; and the whole case, as it then stood, was referred to the General Assembly.

At the same Commission of March 1841, at which these proceedings took place, Dr Candlish brought under notice the interlocutor pronounced by the Court of Session, ordaining the presbytery of Strathbogie to receive and admit Mr Edwards to the benefice and cure of Marnoch. He also called attention to the proceedings which had taken place on the settlement of the presentee. The procedure of the Court of Session he represented, as so extreme and extraordinary a stretch of the civil power, that he believed none even of the Moderate party could have contemplated it ; and he held it as involving the doctrine, that the civil courts had power to give orders in regard to the performance of any religious or spiritual service whatever. The independent authority of the Church was now, he said, truly invaded ; and as the authority usurped by the Court of Session went to annihilate every vestige of the spiritual character, so did it necessarily go the length of annihilating Christianity itself. He maintained that, if the civil magistrate could issue an order to the church to Ordain, then the civil magistrate could himself perform the act ; and if this could be done, then the Christian religion ceased to exist ! Adverting to the conduct of the parishioners of Marnoch, on the day of Mr Edwards' settlement, under the power usurped by the

24.
Interlocutor of
Court of Session
discussed.

Court of Session, Dr Candlish could find no terms sufficiently strong to mark his sense of the calm, Christian, and dignified course which they had pursued. They had acted, he said, in a manner well calculated to encourage the hearts of those who, amidst obloquy and abuse, were upholding the rights and liberties of the Christian people. They had put their confidence in the Church. They had not gone, as they would have done some years ago, to build a Secession church, but they trusted in the Church protecting them; and that confidence, he hoped, would be hailed by the Church standing true to her great Head, as the people of Marnoch were standing true to her. He concluded by moving, in substance, that the General Assembly, having considered the recent procedure of the Court of Session, ordaining Mr Edwards to be admitted minister of Marnoch, and that by ministers suspended from the sacred office, find it to be an aggravated encroachment on the jurisdiction of the church judicatories, as ratified and confirmed by various acts of parliament, and an undue assumption of spiritual authority, contrary to the Confession of Faith and to the statutes of the realm; and farther express their deep sympathy with the people of Marnoch, and desire to record their high admiration of the parishioners under those trying circumstances.

It formed one of the singular features of the picture now presented to the country, that this motion, which so
 25.
 Mr E. Monteith. directly assailed the integrity of the judges of the supreme civil court of Scotland, should have been seconded and supported by lay elders, who themselves held high and responsible offices on the Scottish bench. It was contended by Mr Earle Monteith, that this interlocutor of the Court of Session committed violence, not only on the best interests of the Church of Scotland, but on the Christianity of the land. He held it to be an essential principle in the constitution, that the civil courts have nothing to do with the spiritual interests of the people; and he warned the Dissenters of Scotland, that those interests, as hitherto regarded by them, were as much affected by the decision in the Marnoch case, as those of the ministers and members of the Establishment. He maintained that if, on the election of one of their ministers, it could be shown that civil interests were involved, then the civil courts

would be let in ; and, to make good these interests to the parties complaining, these courts might give orders to the ecclesiastical in matters purely spiritual. If directions could be given to the presbytery of Strathbogie to admit and ordain Mr Edwards, orders might, by the same rule, be issued to a Dissenting presbytery to follow the same course.

The motion of Dr Candlish, calling upon the Commission to
 26.
 Opposed by Dr Bryce. condemn the proceedings of the Court of Session, as
 subversive of the constitution of the Church of Scotland, and destructive of Christianity itself, was opposed by Dr Bryce. He contended, that the Court of Session was in the discharge of a duty laid upon them by statute, and that the Church, in presuming to sit in judgment on their proceedings, was in violation of her own laws, which forbid her to intermeddle with things civil. But in this particular case, the judgment complained of had been misrepresented. It was not a judgment ordering the presentee to Marnoch to be admitted to the cure and benefice, to which he had been validly and legally nominated, and for which he had been found duly qualified, “ by ministers suspended from the sacred office ;” but a judgment directing the duty to be discharged, as well by the unsuspended minority, as by the suspended majority of the Strathbogie brethren. Nor was this the only misrepresentation of the civil procedure, into which the proposed deliverance had fallen. The order to admit did not, in all cases, imply an order to *ordain*. Had he himself been the presentee to Marnoch, ordination, in the common acceptation of the term, and on what is esteemed its peculiarly holy and sacred meaning, would not have been requisite. The conduct of the people of Marnoch, which the motion of Dr Candlish so warmly eulogised, on the occasion of Mr Edwards’ settlement, appeared to him to have been just a protestation against the laws, which they were bound to respect. They assumed, that the Court of Session had erred in interpreting the law, and, so far as they had a part to act in the settlement of their minister, they had refused to occupy their place. They went, indeed, to the parish church on the day when the presbytery were to perform the duty, which alike the laws of Church and State had laid upon them ; but it was not to state objections to the induction of Mr Edwards,

but only to manifest their disrespect for these laws, by withdrawing, at a certain stage of the proceedings, in the manner they had done. Since the settlement of Mr Edwards, it was at least alleged that the parish had been disgraced by acts of the greatest impropriety; and these, he understood, were under investigation in the proper quarter. It would, therefore, he contended, be more becoming the dignity of the Commission to wait the result of this investigation, than to hurry into the vote of approbation now proposed. He did not say that the charges against the people of Marnoch were well founded, and he certainly would suggest no censure; but he must dissent from the resolution approving of their conduct.

34. sion was an occurrence which by this time must
 Conduct of the have been anticipated; and the presence of such of
 parishioners of the parishioners, as disapproved of this settlement,
 Marnoch. when the presbytery were about to perform the duty laid upon
 them, might, with great propriety, have been withheld. It might
 have also been kept in mind that, as the ministers, willing to engage
 in this act, were held to be only a "few self-constituted men,"—as
 designated by Dr P. Macfarlane—and not a court of Christ's
 church, the presence of the Christian people at the procedure, in
 which they were to be engaged, was altogether uncalled for, and not
 easily rendered consistent with their creed. The scenic representa-
 tion got up on this occasion was, no doubt, well devised; and con-
 tributed not a little to keep alive the fervour that had been roused;
 affording a theme, on which the Non-intrusion orators failed not
 to expatiate with a corresponding vigour. Dr P. Macfarlane, who
 followed Dr Bryce in the debate on this occasion, had not thought,
 that a single clergyman would have been found to approve of the
 proceedings of the Court of Session. In the Presbytery of Edin-
 burgh, when the same subject had been taken up, these proceed-
 ings, he said, had not found a single advocate, although several mem-
 bers opposed to Non-intrusion had been present. He would himself
 sooner have had his gown torn from his back, than have perpe-
 trated the Marnoch atrocity, had he been a member of the Strath-
 bogie presbytery. It was not, however, the act of ordination which
 he esteemed so particularly spiritual; it was the constituting of

the pastoral relation between the minister and the flock; and hence, he said, he attached no weight to the argument that, in such a case as that of a clergyman already in orders, ordination would not have been necessary, but merely admission or induction. The civil courts were, in his view, guilty of an invasion of the spiritual rights of the Church, in at all interfering with the formation of the pastoral tie; and, in this particular case, a number of self-constituted men—for they were, he maintained, nothing more—had inducted Mr Edwards to the stipend and temporalities of Marnoch. He fondly hoped, however, that in the providence of God much good would come out of this case to the Church of Christ; as it would bring men to adopt right views of the question; but he certainly, he confessed, did feel ashamed, that any minister of the Church of Scotland should come forward to say, in effect,—“let the Court of Session do as it pleases, let it trample as it may on the spiritual independence of the Church, and on the blood-bought liberties of the people—let it proceed to every extremity, we will not oppose them.”

The speech of Dr P. Macfarlane on this occasion, as on all others,
35.
 Claims set up for
 the Church by
 Dr Macfarlane. was distinguished for the undisguised and unambiguous claims which he set up for the jurisdiction of the Church;—claims which, prosecuted to all the extent to which, if well founded, they must be carried, would again inevitably subject Christendom to all the spiritual domination and tyranny, from which the Reformation delivered it. It was also remarkable for the manner in which it disposed of the argument that, in order to admit a qualified presentee, it did not necessarily involve an interference with the holy rite of *Ordination*, as spoken of in this controversy. Dr Macfarlane appeared to acknowledge, that the conferring of holy orders was secondary, in sacredness and importance, to the forming of the pastoral relation within a particular parish; and, by so doing, he narrowed the question between the civil and ecclesiastical courts within very distinct limits;—taking it, in fact, out of the category of spiritual, and placing it in that of civil concerns. The Court of Session held, that until the pastoral relation was formed between the presentee of the patron, and the people of the parish, the former could have no legal right or title to the

temporalities of the living ; that he possessed, therefore, a civil interest, under his presentation, in the forming of this relation ; and that, having a civil interest, the jurisdiction of the civil courts was necessarily let in. The civil courts did not take upon themselves to constitute the pastoral relation, any more than they took upon themselves to take the presentee on trials ; but they claimed the power of declaring, in the first instance, what was the duty of the Church courts in these matters, as the law had laid these duties down ; and, in the second instance, as in the Lethendy and Auchterarder cases, of awarding damages to the parties aggrieved by these courts refusing to discharge their duties. The matter of *Ordination* as understood, and the argument arising out of it, as employed in this controversy, by Dr Chalmers, Mr Dunlop, and others, was one involving no civil interests, giving no civil rights, and, therefore, beyond the power of the civil tribunals. In the case of Lethendy, already alluded to, as in that of Auchtermuchty of old, the Court of Session would have never issued any interdict, to prevent the presbytery of Dunkeld from conferring holy orders on Mr Kissen, the second presentee to that parish ; but they did issue an inhibition, forbidding them to form the pastoral relation between him and the people of that parish, until the civil question touching the validity of the presentation, under which they were proceeding, should be disposed of. Dr Chalmers and Mr Dunlop often spoke with horror of the civil court ordering a presbytery to lay hands upon the head of a presentee ;—an order which they never issued ; as the deed, when done, involved no civil interests. Dr Macfarlane, seeing the matter in a juster view, shifted the atrocity, as he called it, to an order upon the presbytery to form the pastoral relation ;—an act which, incomplete, left the civil interests and rights of the presentee in the same imperfect state ; and which, therefore, gave the civil courts a manifest jurisdiction. When a presbytery, after having found, upon trials, that a presentee is qualified, refuses to proceed to form the pastoral relation, they are manifestly as much in violation of their duty, as when they refuse to take him on trials as to these qualifications, on account of the dissent by the congregation under the Veto law. But it came, of necessary consequence, to be maintained by those who held the taking on trials,

as required by the statute, to be a purely spiritual or ecclesiastical act—having no civil elements, either immediate or remote, connected with it—that the constituting of the pastoral relation, after the presentee had been tried and found qualified, was in the same predicament, and equally tabooed against a secular tribunal intermeddling with it. In all this there was certainly nothing more than a due regard to consistency. But the opponents of Dr P. Macfarlane, in this controversy, were equally bound to preserve their consistency; and he might have spared the somewhat peevish declaration, that it was a shame that any minister of the Church of Scotland should come forward and utter such sentiments, on the forming of the pastoral relation, as were opposed to the opinions entertained by the majority of the Assembly. It did, indeed, require some courage to stand forth the defender of the Court of Session, before such partisan bodies as Commissions of the General Assembly had by this time become; and as nothing was easier than to paint the conduct of the parishioners of Marnoch in the colours employed by Dr Candlish, so was it no very difficult matter to arouse sympathy in their pretended sufferings, and a corresponding feeling of indignation against those who, not deceived by the portrait given by such an able artist, refused to regard them as so very worthy of commiseration. The leaders of the agitation now going forward did not fail, in the mean time, to perceive that the *intrusion*, as they called it, at Marnoch, was a card which, dexterously played, might give them a chance of winning the game. It cannot, however, redound much to their honour if, as alleged, they first sent down instructions to the people of that parish, how to conduct themselves on the day of Mr Edwards' settlement, and then poured out their encomiums on the calmness, decorum, and Christian demeanour, which they spontaneously exhibited.

At this stage of the proceedings at the March Commission, the
36.
Proceedings in the
Commission. member, who justified the interlocutor of the Court of Session, and refused to approve of the conduct of the parishioners of Marnoch on the day of Mr Edwards' settlement, intimated that he would not make a counter motion to that brought forward by Dr Candlish, but would rest content with recording his

dissent. It was the frequent practice of the Church courts to grant this indulgence, if such it was, when asked ; but on this occasion the favour was refused, and the reverend gentleman was informed, that, unless he submitted a counter motion, his dissent could not be received. He accordingly proposed, as an amendment, that it was inexpedient to entertain and pass the resolution brought forward by Dr Candlish.

It was evidently expected, that the amendment now brought forward would have found no one to second it ; but the

27. Amendment seconded. Reverend Mr Goldie of Crawfordjohn, unappalled by the anathemas poured on the head of the minister of the Church of Scotland who should hesitate to approve of the conduct of the people of Marnoch, or to condemn the proceedings of the Court of Session, stepped forward in support of it. The mover of the amendment then gave notice, that, although he had made a motion, in order to be entitled to enter a dissent, he did not mean to demand a vote, and would not call for a division. Here, again, he met with the same want of courtesy, to say the least, which he had before experienced ; and he was now informed, that not only should a division take place, but that, if he or his friends declined to vote, as he had intimated they would, the judgment would be recorded as unanimous, and no dissent against it received.

The procedure now noticed, so clearly tyrannical and uncourteous, was altogether unbecoming in the Commission

28. Uncourteous procedure of the Commission. of the General Assembly ; but its object was sufficiently apparent. Those who supported the amendment, on this occasion, spurned at being dragooned in this manner into recording their votes ; and, on a division taking place, there appeared for the resolution of Dr Candlish, seventy-two—for the amendment of Dr Bryce, ONE—a result which called forth loud cheers, both within the house and from the galleries. At a future period in the controversy, much stress was laid on the vote and division now come to. Arguing from the minority of *one* in so numerous a Commission, on a resolution to condemn the Court of Session, when issuing its decrees in the matter of the admission and induction of a presentee, and to approve of the conduct of the parishioners of Marnoch, in resisting the exercise of this power as

they had done—it was asserted that the Church, however much divided on the question of the right of the civil magistrate to interfere at the stage of taking on trials, was all but unanimous in withstanding his inroads, when he proceeded to order the Church to receive and admit a presentee, found qualified after trial duly taken, to the cure and benefice, to which he had been nominated. It was kept out of view, that at this time Commissions were very skillfully packed by the dominant party; and that, on this particular occasion, the few Moderate members, who were present, were treated with very marked disrespect by the galleries, when they attempted to speak; while the Commission itself drove them to a division and a vote, in a manner far from courteous, in order, no doubt, that the smallness of their number might be proclaimed. After the vote had been announced, several of those who had not divided—not choosing to be driven into giving a vote in the manner attempted—craved leave to join in the dissent taken, but were not permitted.

CHAPTER V.

ASSEMBLY 1841—LAY PATRONAGE—DUKE OF ARGYLE'S BILL— STRATHBOGIE MINISTERS DEPOSED.

THE subject of lay patronage, which had been so frequently before
the Assembly, was now taken up under more pro-
mising auspices to those who sought its abolition,
than it had yet enjoyed. It was introduced in a speech of great
length, and very remarkable dogmatism, by Dr Cunningham, who
had at all times stood among the foremost in the anti-patronage
ranks; and the debate to which it gave rise occupied a more than
ordinary portion of the Assembly's time. The opponents of lay
patronage came forth on this occasion in all their strength, and, it
may be added, in all their boldness. It was maintained, that there
were principles in the word of God which clearly lead to the con-
clusion that lay patronage is unwarrantable and indefensible—
sinful and unlawful; and that such was the light in which it had
always been regarded by all the distinguished men of the Church
of Scotland, before the passing of the act of Queen Anne 1711.
It was no doubt felt to be somewhat awkward for this view of
the question, that the principle of Non-intrusion, as embodied
and carried out in the Veto Act of 1835, was founded on the
assumed existence of patronage—that sinful and unlawful thing;
and it has been seen, that this act had been advocated by many
of its ablest supporters, on the ground that it would, if adopted,
contribute to maintain and strengthen this system. This difficulty
was, indeed, surmounted—according to Dr Cunningham—when it
was recollected, that Non-intrusion was a principle, applicable,
wherever the initiative in the settlement of a minister might be

placed, but that the principle of patronage bore upon the great question—Who ought to have the original nomination? It was equally clear, according to him, that those who defended patronage gave up the spiritual independence of the Church, and must maintain the doctrine of a civil jurisdiction in matters ecclesiastical. And in this Dr Cunningham, so far, did no more than justice to his opponents, who, all along, under limitations set forth, upheld at least this latter tenet. It was now admitted by the advocates of anti-patronage views, that, under the operation of the Veto law, the evils of patronage might not be effectually guarded against; and the conclusion was drawn, that, as all the endeavours of the Church, to obtain a legislative sanction to this very inefficient check upon its exercise, were proving unavailing, the true position to occupy was that of demanding the total and unqualified abolition of patronage. Dr Cunningham strongly recommended a return to the act 1649, which, according to him, had the double merit of abolishing all patronage whatever, whether in the crown, presbyteries, or lay patrons, without prescribing the way or manner in which pastoral appointments were to take place. The mode of forming the pastoral relation was, of course, to be in the hands of the Church courts, and, by their edicts, the Christian people—the Church *par excellence*—were to be bound and tied down. To have given the legislature itself any place in this matter, would have been to surrender the spiritual independence of the Church—to be guilty of high treason against “the crown-rights of the Redeemer.” But how to maintain this doctrine, and, at the same time, to be knocking at the door of parliament in the matter of the Veto, as the Church was then doing, did appear a somewhat difficult task, and probably constrained Dr Cunningham, in calling on the Assembly to follow out his views, to narrow his motion into the following terms,—“The General Assembly, having considered the overtures anent patronage, resolve and declare, that patronage is an evil and a grievance, has been attended with great injury to the interests of religion, and is the main source of the difficulties in which the Church is now involved; and that its abolition is necessary, to put the whole matter of the appointment of ministers on a right and permanent basis.”

Dr Chalmers gave, on this occasion, a somewhat qualified support to the resolution of Dr Cunningham. He was quite ready, he said, to go as far as any one towards the abolition of patronage, if it should appear that it was the existence of patronate rights which opened the door to the interference of the secular with the ecclesiastical tribunals, and led to such "dread atrocities" as had been witnessed at Marnoch. But should the bill, which by this time the Duke of Argyle had introduced into the House of Lords, or any other measure, afford a protection to the spiritual independence of the Church, and a guarantee against such deeds as had been perpetrated in Strathbogie, he would recommend a truce to anti-patronage agitation. At the same time the *beau idéal* of an Institute, likely to promote all the purposes which the State has in view by the support of a religious establishment, was with him an endowed and extended Church, with ministers paid by the State, and chosen by the people. If this was not reached within the Church of Scotland, and lay-patronage—with which, of course, it could not exist—was still upheld, it must, he said, be recollected that the upholding of this system lay with other quarters—not the Church. He was not among the number of those who thought patronage opposed to scripture, and he entertained towards it neither aversion nor fear. He was persuaded that, should the bill of the Duke of Argyle, then before the House of Lords, pass into a law, everything which the Church could desire would be attained—agitation would cease, and peace would be restored.

In the view taken by Dr Chalmers of the bill of the Duke of Argyle, Dr Mackellar participated, but took occasion to intimate, that should this bill be defeated, he would lend his aid to attain the object contemplated by Dr Cunningham; while, on the other hand, should it receive the sanction of parliament, he altogether disclaimed receiving it as an instalment. He would take it, as a final disposal of the unhappy questions, that were now bringing the Church of Scotland to the brink of ruin.

It was not a little remarkable that the amendments on Dr Cunningham's motion should have come from his own side of the

Assembly, and been moved at so early a stage in the debate by Dr Mackellar, and seconded by Dr P. Macfarlane. This amendment called upon the Assembly to find, that as the motion of Dr Cunningham was calculated to increase, and not to diminish the existing embarrassments of the Church, it did not appear for the interests of the Church or the people of Scotland to adopt it." Cautious and guarded as it was, it did not however meet the views entertained by Dr Cook and his friends on the subject of patronage; and another, simply dismissing the overtures, was brought forward on the Moderate side of the house; and, after two discussions, ultimately adopted as its judgment, by a narrow majority of six.

The debate, on this occasion, although long and energetic, presented no new arguments on either side of the question; but the result indicated very clearly, how rapid was becoming the march of the Church towards anti-patronage views; and was hailed by Dr Cunningham and his supporters, as a signal triumph to their cause. The defence of the existing mode of settlement was taken up by Dr Cook, in a speech remarkable for that forbearance and moderation towards the opinions of others, which, treating a question of mere expediency, as he esteemed it, ought to be brought to its discussion; and contrasted strongly with the singularly dogmatic address, by which Dr Cunningham had introduced the original motion. It was remarkable, that while Dr Chalmers and Dr Mackellar distinctly disclaimed the taking of his Grace of Argyle's bill, merely as an instalment of the Non-intrusion principle, no such disclaimer came from Dr Cunningham and his friends; and it may fairly be inferred, that their support soon afterwards extended to this bill was given on the very ground, that it was a stepping-stone to the ultimate abolition of patronage.

The challenge thrown out by Dr Cunningham to his opponents, to show that patronage was "a plant which our heavenly Father had planted," was met in this debate, by demanding from those, who represented patronage as opposed to Scripture requirement, to produce evidence in support of their position. There were many things in themselves

4.
Amendments by
Dr Mackellar and
Dr Cook.

5.
Remarks on this
debate.

6.
Answer to Dr
Cunningham's
argument.

most proper and expedient, in the government and discipline of the Church, for which the direct sanction of Holy Writ could not be produced, and they were willing to place patronage in this category. But when the ground was taken, that it was opposed to the rule of Scripture, that rule ought to be pointed out; and it was asked, if this had been done by those who occupied it. It was argued by Dr Bryce, that when he looked around him, and saw so many able, zealous, and pious ministers, as were then assembled together, and almost all of whom had entered the Church by the door of patronage, he might at least appeal with confidence to its good fruits, and efficiency in promoting the object for which it is maintained. When it was said, that a return to the Act 1649 would secure the Church against its alleged evils, he would remind the Assembly, that under that Act, the most violent settlement of ministers upon reclaiming congregations, known in the history of the Church of Scotland, had taken place; settlements in which the “spurred and booted dragoon” had taken his part, called into the field by the Rutherfords and Guthries of that age. He did not hold, that patronage was a *sine qua non* to the peace and efficiency of the Church; but he maintained that, towards the attainment of these objects, it was better fitted than popular election. The Assembly had been called upon by Dr Chalmers to look to the character of Dissenting ministers, and their efficiency and success in the work of the Gospel. He—Dr Bryce—must still maintain, that the tendency of the system, which renders the minister dependent on the whims and caprices of the people, was not so likely to produce men of ability and learning, as that which made them dependent on the State. The conduct of patrons, in exercising their rights in opposition to the good of the Christian people, had also been brought forward as an argument for its abolition. He had again to remind the Assembly, in answer to this, that at the very time when this argument obtained a place and a hearing, the greatest of all patrons—the Crown—was actually exercising his rights in promoting those who held the views—not, certainly, of his reverend friend Dr Cook—but, on the contrary, of men who were all that the anti-patronage section could desire. In the mean time, he was quite ready to negative the affirmation of the motion, submitted by

Dr Cunningham, that patronage was an evil and a grievance; and to maintain that, with all its imperfections, it was the best adapted to maintain the peace and efficiency of a national Church; and he felt quite easy in the vote which he should give. He did not envy the supporters of Non-intrusion and the Veto, as found in the bill of the Duke of Argyle, on the position in which the present motion placed them.

Mr M. Crichton took the opportunity of expressing his regret, that Dr Chalmers should have allowed, so far as
 7. he had done, that the question of patronage was
 Mr M. M. Crichton animadverts on Dr Chalmers. one of expediency, not of principle. He could understand and appreciate the opposition given to anti-patronage views by those, who had always defended the cause of a high-handed patronage; but he was at a loss to comprehend the principle, or applaud the trimming policy of those Non-intrusionists, who appeared prepared to throw their influence into the same scale, or at least evaded the principle of the question, and sought to defeat it by a side-wind; and he left it to those who, a few weeks before, had been avowing anti-patronage views, and supporting anti-patronage petitions, to justify their conduct as they best could. He thought the argument very cheap, which deduced the doctrine, that because there is no express directory in Scripture governing the appointment of ministers, therefore the right of the people to choose their own pastors has no basis in Scripture authority. He held, that the election of pastors in the Church is deducible from great principles, laid down in the Word of God. It is there declared, that the kingdom of Christ is a spiritual kingdom; and he asked if it was consistent with this character, to regard the choice of its officers as a secular right—a matter of worldly merchandise, to be bought, or sold, or inherited? He protested solemnly against the doctrine, that had been maintained by Dr Chalmers, that as great evils may result from popular election, as from patronage. This argument altogether overlooked the high religious qualification required from electors. To place their judgment in the matter in the same category as that of any lord or squire, himself an alien to the Church, he pronounced to be a libel upon the Christian people of Scotland. Mr Crichton disposed of the argument of Dr

Cook, that patronage was justly placed in the hands of those who had supported and endowed the great religious institute of the land, by denying that such was the position in which patrons stood ; and asserting, that this position would be more fairly described, if they were regarded as having first robbed the Church of her revenues, and then seized on the patronage of her livings.

To assail patronage on the high principle resorted to, and
 Duke of Argyle's ^{8.} to agree to place the settlement of ministers
 Bill. under the provisions of the Duke of Argyle's bill,
 were still, however, felt to be positions not easily rendered consistent with each other. To the task of reconciling them, Dr Candlish brought all his ingenuity ; but the support given by him and others to his Grace's measure, when next under discussion, was anything but very warm or hearty. This measure was introduced to the Assembly by Dr Mackellar, in bringing up the report of the Non-intrusion committee, and described by him as "the dawning of a better day for the Church."—Dr Candlish spoke of it as "affording ground for reasonable expectation." With great energy, and equal eloquence, and certainly with not a little dexterity, he appealed to the Moderate side of the Assembly, who could conscientiously entertain and work out a patronage measure, to support the bill of the noble Duke, and so far, at length, give peace to the Church. The fervour of Dr Candlish in making this appeal, which he must have felt assured could not be responded to, without a surrender of the principles on which his opponents had taken their ground, seemed to rise, as the conviction must have pressed upon him that he had himself fallen into a false position ; and one, indeed—as appeared from letters that had passed between him and the Duke of Argyle, and as was pressed upon him by an honourable member—Sir James Elphinstone—which did require explanation. This he laboured strongly to afford ; and, undoubtedly, if any member of Assembly could have reconciled the support of a motion, which, taken as the embodiment of the doctrines by which it was introduced, held up patronage as in principle sinful and unwarranted by the Word of God, with the advocacy of a measure, the very object, if not the very title, of which was the

more effectually to maintain this mode of settlement in the church, it was Dr Candlish. It was, when such complicated problems as these came to be solved, that the talents of this distinguished debater were most powerfully displayed; but if, on this occasion, he was regarded by his friends as having made his own consistency plain to demonstration, he failed, with all his eloquence and fervour of appeal, to obtain the sanction of the Moderate party to the bill of the Duke of Argyle. It was moved as an amendment by Dr Hill, that the measure was not likely, if passed into a law, to relieve the difficulties under which the Church laboured; and, what Dr Candlish and his supporters desired of all things to keep out of view, the amendment proceeded to declare that, in order to the attainment of this desirable object, the steps necessary for rescinding the Veto Act ought to be taken. The motion, to which this amendment was opposed, deserves particular attention, as indicating, in its very terms, that doubts, to some extent, were entertained about the expediency or the good effects of the proposed bill, by those who, notwithstanding, gave it their support. It set out with approving of the diligence of the Non-intrusion committee; but, before adverting to the measure of the noble Duke, it took occasion, as if necessary, to guard the Assembly, in agreeing to it, against any compromise of the ground of principle already taken up, to re-declare the determination of the Church, to maintain inviolate the fundamental rule, that "no minister shall be intruded into a congregation contrary to the will of the people;" and then proceeded to receive the bill as a measure, that "does *substantially* provide for the maintenance and practical application of this principle of Non-intrusion, as asserted by the Church;" and as "*substantially* in accordance with one of the plans suggested by the committee of last Assembly, and sanctioned by that Assembly." It certainly did appear very strange that, at the very time when Dr Candlish put this construction on the bill of the Duke of Argyle, he should have called upon the Moderate side of the Assembly to support it; or expected that they would have joined, in pronouncing it "an important boon to the Church and country." The attempt to divide that party on this question was sufficiently artful; and it

fell, as has been shown, into able hands. While Dr Candlish defended himself and his friends from the charge of being rebels, in maintaining the Veto law, he conceded that their opponents, in the view taken by them, were equally conscientious with himself; and presuming that all desired the peace and prosperity of the Church, and expressing his satisfaction that some at least on the other side had almost come over to right Non-intrusion views, he submitted in his motion or resolutions, that the difficulties of the Church had become so serious and alarming, that all ought to unite in any measure "fitted to put an end to the collision, now unhappily subsisting between the civil and the ecclesiastical courts;" and that a committee be appointed to watch over the progress of the bill of the Duke of Argyle; of which, with the exception of the clause making it imperative on presbyteries to inquire whether the parties dissenting were actuated by factious or malicious motives, even in the absence of all allegation to that effect, the Assembly was called upon to approve.

In refusing his approbation to the bill of the Duke of Argyle,

9. Dr Brunton admitted that the time had arrived,
Dr Brunton. when more deference ought to be paid to the popular

voice, than had hitherto been done, in the settlement of vacant parishes. But he deprecated foreign interference, and desired that the boon should come from the Church herself. The bill was also, in his opinion, defective in not requiring dissentients to state their reasons of objection, in order that presbyteries might judge of their validity and value. Such a statement he regarded as in every light most essential; and, as it was excluded by the bill, he could not give his support to it.

Dr Hill was not less anxious than Dr Candlish, to restore peace

10. and concord to the Church; and, regarding the
Dr Hill. Veto law, and the adhering to it by the Church, not-

withstanding it had been found illegal, to be the real source of all the dangers to which she was now exposed, he called upon the Assembly to unite in the rescinding of this law. He warned them, also, that, after the reception of the bill of Lord Aberdeen, there was not the remotest chance of such a measure, as that proposed by the Duke of Argyle, passing the legislature. These views of

the reverend Professor of Divinity were combated by Dr Lee of Campsie, who maintained that, even although the rescinding of the Veto law might be the means of saving the Church, she ought not to seek for safety in what would expose her to contempt. He held, that the measure introduced into the House of Lords by the Duke of Argyle was one, which those on his—the Moderate—side of the Church ought to support; and he was glad to think, that he spoke the sentiments of others as well as his own. He had himself no great regard for the Veto; but it was easier, he said, to confer popular privileges than to take them away; and the bill before the house was in his opinion the only modification of patronage which the Church could expect. He admitted, that the advocates of anti-patronage would still continue to agitate; but he believed that, if the present bill passed, the people would not respond to them. He was most desirous that the sin of schism, which he accounted very grievous, should be avoided. Those on the other side of the Church had, he said, shown themselves willing to make concessions; and he called upon his Moderate friends to recollect the very near interest which they had in following their example; placed as they were between the commands of the civil and ecclesiastical courts, with the certainty of ultimately finding themselves in the predicament of imitating the conduct of the ministers of Strathbogie:—a predicament in which, said the reverend gentleman, he for one would not wish to be placed.

While Dr Lee called upon his friends on the Moderate side of the Church, to agree to the motion of Dr Candlish,
11.
Professor Brown.
Mr D. Mylne. Professor Brown, of Aberdeen, represented the amendment of Dr Hill, as demanding from the majority of the Assembly a concession in the repeal of the Veto, which, as Christian men, they could never make. Mr D. Mylne, advocate, on the other hand, regarded the adoption of this amendment, as paving the way to approach the legislature with any prospect of success; and he expressed his astonishment that those who regarded patronage as indefensible, should sanction a measure which they allowed amounted to a modification of what they condemned. Dr P. Macfarlane vindicated the measure in all its provisions, leaving it to those, who had supported the motion of Dr Cunningham on

the patronage overtures, to defend their consistency when found supporting the present bill—a task which they were able, and he was persuaded could easily perform; and he called upon the Moderate party, who had opposed the Veto law, on the ground that it could not be enacted without the concurrence of the civil powers, to support a measure intended to obtain for it this legislative sanction. Dr Robertson, of Ellon, took his stand against the measure before the Assembly, on the ground that it excluded reasons being assigned by those dissenting from the settlement of a presentee;—an exclusion which, in principle, as he esteemed it, was unjust and unchristian. And, in reply to the argument, that he and others had carried into effect the Veto Act, against which there lay the same objection, he maintained that obedience, when it became the law of the Church, was quite consistent with opposing and protesting against its enactment. He believed, indeed, that the march of events would bring about all that the supporters of this bill desired—the concession of power to the people, to be exercised without danger for the good of the country, and the good of the Church. But he claimed for those who now possessed the exercise of patronate rights, that they withheld this power from the people in the mean time, not from a love of power to themselves, but from a belief, conscientiously entertained, that at present a modified patronage was best calculated to preserve society.

Dr Cunningham, during this debate, undertook to show that
 12.
 Remarks on this debate. those who supported the Duke of Argyle's bill, which was brought forward the better to regulate patronage, did not necessarily approve of this system. The bill itself, according to him, contained nothing approving of patronage; a view of the measure, as it may be inferred, in which his Grace of Argyle could scarcely be expected to concur. It was substantially, he said, a Non-intrusion measure, providing that the dissent of the people, with or without reasons, should be conclusive against the settlement of the presentee; and it might certainly, in this point of view, be conceded, that it did anything but regulate and maintain patronate rights, which it thus laid prostrate at the feet of the people—or rather, as a more minute dissection of the bill might

show, at the discretion of the Church courts. Dr P. Macfarlane had commended the bill in high terms, as transferring the *jus devolutum*, where patrons neglected to present, from the presbytery to the crown; and the ground, which such a position afforded for arguing the expediency of patronage in the eyes of those who took it up, was at once surmounted by Dr Cunningham declaring, that he held this provision of the bill as altogether worthless;—a view of it, undoubtedly, so far justified when it is recollected, that the presentee of the crown was, under the bill, to be dealt with after the same manner as the nominee of the private patron, and the people to be let in to dissent and reject, with or without reasons. It had been maintained by Dr Hill, that the measure, if passed into a law, would not settle the Auchterarder and Strathbogie cases; and this was readily granted by his opponents, who, in their turn, asked if the rescinding of the Veto, as demanded by Dr Hill, would be attended with this happy effect. The reply to this rejoinder, although not given, was very obvious. If the Veto had at the time been rescinded, on the grounds on which, in 1843, it was blotted out of the statute-book of the Church—namely, that it had been, *ab initio*, both civilly and ecclesiastically null and void—it would, beyond all doubt, have settled the Auchterarder and Marnoch cases within the ecclesiastical courts.

The ministers of Strathbogie now appeared at the bar on the
Counts of the libel. ^{13.} libel served upon them, and which proceeded,
 first, upon the Confession of Faith, and set forth, that it was a truth of God's Holy Word, declared in this Confession, that there is no other Head of the Church but the Lord Jesus Christ; and the learned counsel for these ministers, in his pleading before the Assembly, readily admitted, that the Confession of Faith was part and parcel of the statute-law of the land. It was, in truth, he said, the very statute on which his clients founded their right, to seek the redress they had demanded and obtained from the civil courts; and on which these courts had found themselves enabled and called upon to grant it. He contended, however, that the clause on which the libel founded, had no reference to the Church as established by law, but alluded alone to the

Church Universal, of which the Lord Jesus, in contradistinction to the Pope of Rome, was declared to be the Head, and the only Head. He denied that his clients, in acknowledging the authority of the civil magistrate in matters connected with the Established Church of Scotland, had in any way impugned the doctrine of the Headship of Christ in the Church spiritual, in which, with all Christians over the world, they most firmly believed; and in yielding obedience, as they had done, to “the powers that be,” as “ordained of God,” they had recognised this Headship, in a practical conformity with the command issuing under its authority. The libel further alleged that, in applying to the Court of Session, and obtaining, as they had done, the remedy which they sought, as their legal right, under the Confession of Faith, they had violated the vows of obedience, under which they had come to the Church at their ordination. To this it was replied, that the ministers of Strathbogie could not forget—and if they had forgotten, there were competent tribunals to compel them to remember—that they had also come under the oath of allegiance to the sovereign; and as they had sworn under this oath, to obey the laws of the empire, so had they a correlative right to be protected by these laws, when aggrieved in any quarter whatever. They had exercised this right; the competent tribunals had found that they were aggrieved, and had granted them the redress they sought. It was impossible, he argued, that in thus having regard to the oath of allegiance, under which they had come to the Sovereign, they could be in violation of any vow taken to the Church, which it would not have been impiety to have come under. The supposition could not be entertained, except on the preposterous hypothesis, that a man may have one conscience, when he swears allegiance to his King, and another when he vows obedience to the Church.

The gravamen of the crime of which the Strathbogie ministers had been guilty, came out, however, in that count of the libel which charged them with making application to the civil court, to suspend the censures of the Church; and to interdict her courts from carrying into effect her spiritual edicts, or proceeding as they might see fit for the religious and spiritual welfare of her flocks. The ground now taken up by

14.
Charge of applying to the Civil Court.

the libellers admitted, that by law the civil courts might possess the jurisdiction which they had exercised ; and that, of course, the ministers might possess the legal rights they had claimed ; but it set forth, notwithstanding, that “ by the making of which application, you did deny the truths of God’s Holy Word, and did disown the Lord Jesus, in so far as regards his authority as only King and Head of his Church ; and, contrary to the Word of God and the Confession of Faith foresaid, and to your solemn vows and engagements before-mentioned, did acknowledge the powers, committed by Him to church-officers alone, to be vested in a secular court, having no rule or government in his house, and did acknowledge the said secular court to be supreme in matters spiritual over the judicatories of this Church, and to obstruct, stay, and subvert the same.” It thus came forth, in the very broadest relief, that the very startling proposition, with which the General Assembly were now called upon to deal, was simply this—Can a minister of the Church of Scotland established by law, in obeying the law, as laid down by the supreme civil court of the State, and on seeking its protection, as a subject of the realm, be punished by his ecclesiastical superiors, because in rendering this obedience, and seeking this protection, he necessarily violates a rule or edict issued by the ecclesiastical judicatories—themselves erected by, and acting under, the sanction of the laws, which, it is admitted, the alleged spiritual delinquent has respected and honoured ? This evidently involved another proposition, from which the Assembly could not escape—namely, whether a Church established by law can, according to law, issue edicts and rules, obedience to which shall constitute a crime or offence, known to and punishable by the law ? The affirmative of both of these propositions must, it was seen, be of necessity maintained by those who were prepared to defend the relevancy of the libel now before the house ; and from this obligation the majority of the Assembly 1841 did not shrink !

A previous question was raised at this stage of the proceedings, namely, how far the counsel for the Strathbogie ministers could be heard at all on the relevancy of the libel ? It was contended, that the Commission having already found the relevancy, no question could now be entertained on the

15.
Counsel heard on
the relevancy.

merits of that finding, the only point being—Had they or had they not, in doing so, exceeded their powers? If they had not, then the relevancy was a *res judicata*—a judgment of the last General Assembly by its Commission, which the present Assembly could not review or reverse. The objection involved a very high constitutional point, and, if sustained, would have thrown into the hands of Commissions a very dangerous power, while it would have circumscribed appeals and complaints against their decisions within very narrow limits. It was very strenuously opposed, by those who looked upon Commissions as courts of very doubtful authority, and very liable to abuses of every description. By them it was maintained, that everything which the Commission had done was now under the review of the Assembly, and subject to censure or approbation—affirmation or reversal. It was not disputed that, on a mere revision of the Commission Record, the Assembly might not be empowered to subvert a judgment, however erroneous, where parties had acquiesced, and might be limited to censuring the Commission for having passed such judgments. But, in this particular case, members of the Commission had complained against the sentence finding the relevancy of the libel. This complaint had been received, and had brought up all the proceedings upon their merits. However much the majority of the Assembly might have felt inclined to enter into the doctrine, that the relevancy was a *res judicata*, the difficulties in the way of doing so were felt to be so great, that it was agreed, at length, to take the discussion upon the relevancy, which, indeed, embraced the whole question before the house; and, after solemn prayer offered up to Heaven for light and direction, the Assembly proceeded to the debate.

The Reverend Dr Chalmers took the lead in this most important discussion, and began by congratulating the Assembly, that the question before it was, at least, a very simple one, being capable of but one precise and definite solution. Hitherto, he said, *Non-intrusion* and *Spiritual independence* had been blended and confounded together; and, to some minds, so intimately had these been mixed, that when he, at one time, spoke of rescinding the Veto law, they leapt at once to the conclusion, that the acquittal and restoration of the Strathbogie ministers must follow

16.
Dr Chalmers's
speech.

as a matter of course. It would now, however, be seen how distinct the two questions were ; and it was the business of the Church, in the first instance, to vindicate her authority over her own refractory children ; and, this being done, she might turn, he said, to obtain a better mode of settling ministers, for the future, in vacant parishes. The question between the Church and the Strathbogie ministers he held simply to be this—Is disobedience to their ecclesiastical superiors a good or a bad action ? If they held it to be good, because done in obedience to a civil mandate, this was only shifting the ground, and they were still landed in the inquiry—Whether to obey the civil or ecclesiastical court, in a thing purely ecclesiastical, is the right or wrong principle ? In the disobedience of the Strathbogie ministers, we had, he maintained, a blow struck at the entire jurisdiction of the Church. In the enactments of a statute, we may have a law, good or bad, old or new, as it may happen ; but these, he maintained, were properly distinct and separate matters, and would be seen to be so by every one, were the question between two distinct civil governments, as it was between two distinct jurisdictions, of the same government. If France, said he, should instigate a subject of England, to disobey a law found in the English statute-book, nothing in the character of the law could be set up as a defence for its violation ; and he held the same rule and principle to apply to different courts under the same government. If the ecclesiastical authority is disobeyed by those subject to it, at the instigation, or under the compulsion, of the civil, it was, he contended, no defence to fall back on the character of the law, which they were required to respect. Be it legal or illegal, in the light of the secular tribunal, obedience was due to it by the ecclesiastical person subject to it. Nor did the principle, he maintained, necessarily involve the *imperium in imperio*, if the matters to be administered by the civil and ecclesiastical courts were clearly and definitely kept apart from each other, in their substance and in their nature. This rule had been observed in other days, and by other judges of the Court of Session ; and, in the Auchtermuchty case, the civil court, when applied to for injunction against the ecclesiastical acting as called upon, had refused to grant it, on the ground that the matter belonged to the internal government of the Church,

“with which the Lords had nothing to do.” The Lords of the present day, said he, might think differently, and collision may be unavoidable; but who are they, he asked, who created it, by bringing the *imperium* of the civil into the ecclesiastical province? On them alone was chargeable all the anarchy of an *imperium in imperio*, from which the Church was now suffering. There was no supreme power in this kingdom, he contended, that would overturn the sentence of the General Assembly in things ecclesiastical; and there was no such difficulty, as was alleged by some, in drawing the line between the civil and the ecclesiastical provinces. It had been done, he said, from the Conservative hustings in Perthshire, where it was given forth as a principle, that the power of the patron and the civil court ceased from the moment that the presentee was handed over to the Church. But it was, he held, as possible for the Court of Session to invade the proper province of the Church, as for the Church to make an inroad on the territory of the Court of Session. It was as possible, that the judges of the Court of Session might be tyrants, as that those of the courts of the Church were rebels; and when these jurisdictions did come unhappily into collision, he knew and acknowledged but one authority, that of Parliament alone, as competent to settle the question. The Church, he said, had been knocking at the door of the legislature, but hitherto in vain, in order to learn what its understanding was in regard to the footing on which the national Church of Scotland stood; and he was still in hopes, that parliament would decide the question which had arisen, otherwise than by leaving the Church to the war of interdicts, suspensions, and legal exactions, to which she was now exposed. But, in the mean time, he contended, there must, on the part of the Church, be resolute principle and resolute endurance; and then, said the reverend doctor, “then we shall know what to do, when once the legislature has spoken,—whether, on the one hand, they shall keep it possible for conscientious men to work their endowed institute;—or whether, on the other, they shall charm the hearts of Radicals and Voluntaries, by letting the world know, that any national Establishment of theirs implies an utter prostration of the ecclesiastical to the secular power.” The Church, he added, had assumed both a reclaiming

and an imploring attitude; but it was to be remembered, that she did not call on parliament to confer, but to respect and recognise the inalienable rights, which she holds immediately of her Head in heaven, and dare not surrender to any in the world. It might, he thought, have been expected, that, in the mean time, there would have been a suspension of hostilities; but, however anxious the Church was to rest upon her oars, her enemies were contriving every device of annoyance imaginable; at one time, in the shape of hostility without—at another, of that of anarchy within her own borders. How far the Strathbogie ministers had been employed as instruments of these enemies, he would not inquire; and it mattered little, he said, whether they had been leaguings with the Church's foes, or had been rebels and insurrectionists of their own accord. He would grant to them even the impulse of conscience, stirring them to the course which they had pursued; but it would form no element in dealing out to them the punishment which they had incurred. It was not with the motives, but with the facts, that the Assembly had to do; and these facts were notorious and judicially acknowledged. If the plea of conscience was sustained, then, said he, heresy would ride rampant in the Church, and contumacy set all government and discipline at defiance. The Church must now make a firm and resolute stand, otherwise the encroachments which, for the first time since 1688, had been made upon her territory would become of everyday occurrence. It was, he said, manifestly in the power of a few legal gentlemen in Edinburgh to keep the Church of Scotland in incessant hot-water, and it was time that they should be taught, that they calculated vainly on the Scottish clergy flinching from their principles, and on the Church at length giving way. If the ministers at the bar, said he, did not humble themselves, their deposition was inevitable. The Church of Scotland could not tolerate, and, what was more, she could not survive, the scandal of quietly putting up with a delinquency so enormous as that into which these brethren had fallen. Dr Chalmers then concluded by moving, "that the sentence of the Commission of the 18th November 1840, sustaining the relevancy of the libel, should be affirmed; that the libel should now be found proven, with the exception of the minor charge; that the ministers

at the bar should be found guilty of the offences therein charged ; and that, in respect of these offences, the said ministers should forthwith be deposed."

When Dr Chalmers asserted, that the rescinding of the Veto Act,
17. Remarks on Dr Chalmers' speech. as having been *ab initio* illegal, and passed by the Church *ultra vires*, would not necessarily involve the acquittal of the Strathbogie ministers, under the libel which had been served upon them, he really arrogated to the Church a power, in itself the most arbitrary and tyrannical, and altogether inconsistent with her relationship to the State. These ministers stood accused of having disobeyed an ecclesiastical statute, requiring them to reject a presentee within their bounds, under the circumstances which had arisen, and not to proceed to his admission to the cure and benefice, to which he had been nominated. Now, it was one of the express stipulations within the compact which united Church and State in Scotland, that the rights of lay patrons, and of the parties presented by them, should be respected ; and presbyteries were bound and astricted to receive and admit these parties. In the Church, therefore, to call upon presbyteries not to discharge this duty, save and except for causes which both of the contracting parties had acknowledged as sufficient, and the legislature had established as legal, was, in plain terms, to commit a breach of the compact. The ecclesiastical statute of 1834 was now acknowledged by Dr Chalmers himself, under the hypothesis assumed, to have been illegal, and *ultra vires* of the Church to have passed ; yet, notwithstanding this, the parties refusing obedience to that statute, on the very ground now allowed to be sound and valid, might be reached by the spiritual arm of the Church ; and unless they humbled themselves before the General Assembly, for the sin of having refused to be participators in a violation of the compact between the Church and State, they were forthwith to be deposed ! To those who, at the distance of a few years, take a sober and candid survey of these transactions, it will appear " passing strange " that such doctrines, involving, as they do, so many absurdities, and so much injustice and tyranny, should have found so many and so eloquent supporters, within the General Assembly of the Church of Scotland. To tell a body of clergymen, with the one breath, that

they had respected the law of the land as binding on the Church, and had regarded the terms of the contract which united her to the State; and to call upon them, with the next, to humble themselves before the Assembly and to confess the crime of which, in so doing, they had been guilty, was altogether a scene of the most extraordinary nature ever enacted within any court, civil or ecclesiastical. When Dr Chalmers limited the question, as before the Assembly, to one, calling upon them to say, "whether disobedience to ecclesiastical superiors was a good or a bad action," he ought to have narrowed it still farther, to "disobedience, even in matters in which the ecclesiastical superiors had no right or title to demand observance of their edicts;" and common sense would have wrung from himself the answer, that such disobedience could not at least be a "bad action." Without, however, occupying this truly honest and ingenuous ground, the learned Professor maintained, that the nature of the ecclesiastical edict could be no element with those to whom it was issued, in deciding whether or not obedience was to be given to it; and, moreover, although disobedience was exacted from them by a civil court, he held that the rule no less applied, that it was a "bad action" in them to resist. In all this argument, Dr Chalmers assumed, that the Church courts had a co-ordinate jurisdiction in the matter that had arisen with the civil—the very question to be determined, not taken for granted. But on the supposition, which Dr Chalmers had admitted, that the Church had not a separate and independent jurisdiction legislatively to enact the Veto, but that the State might step in and say, that to do so is *ultra vires* and of no legal effect, it may be asked, from what source she claims jurisdiction judicially to demand the obedience, or to punish the disobedience? And it would not be very easy to answer the question. When Dr Chalmers further went on to state, that the power of the civil court over a presentee ceased from the moment that he was handed over to the Church, he hazarded a doctrine which it is impossible to maintain in all the latitude claimed by him. We have only to suppose that the presentee, when inducted, preached the doctrine of a Trinity in the Godhead, as found in the Confession of Faith, but that the Church, in the mean time, has changed her creed, and has ordered him to preach the tenets of the

Unitarian. He refuses obedience to this edict, as the Strathbogie ministers did to the Veto Act; and, when threatened with deposition, he applies to the civil court. Now, whatever jurisdiction the Court of Session may have, in saying what doctrines the Church shall order to be preached, it will not surely be denied, that it has power to protect the minister who preaches those, which the State has solemnly sanctioned as agreeable with, and refuses to preach what the State has as solemnly repudiated as contrary to, Holy Writ. In all this the Court of Session is only in discharge of the duties imposed upon it; and the castigation, which Dr Chalmers received from the reverend gentleman, who followed him in the debate, for having spoken of the judges of Scotland in the terms which he employed, and held them up as tyrants, recklessly and lawlessly invading the rights of the Church, was felt to be richly deserved.

The Rev. Mr Bissett, of Bourtie, submitted to the Assembly, that
 18. the motion laid at this time upon the table of the
 Motion objected to Assembly by Dr Chalmers went somewhat too far.
 by Mr Bissett of Bourtie.

The only question before the Assembly was—Whether the relevancy of the libel was to be affirmed? The consideration of the value of the evidence adduced in support of it, and the sentence that ought to follow, were, he maintained, separate and distinct matters. The concluding part of the motion, referring to the punishment to be inflicted, was accordingly struck out—Dr Chalmers having by this time left the Assembly. Had not the judgment, sought by the reverend professor, been one which had been well discussed and approved of by his friends, and really the property of the party, more than of the individual mover, such a liberty with it would scarcely have been taken, or tolerated in his absence. But by this time the business of the Assembly had been, in fact, transacted in the select bureaux, which prepared and settled every matter before it reached the house; and hence came compliance with a suggestion, that the motion of a member, founded on and brought forward, after a detailed and elaborate view given by him of the question, should be so materially mutilated in his absence.

Mr Bissett then proceeded to the important matter before the
 19. house as it really stood. He argued that, were it to
 Speech of Mr Bissett. be granted, as maintained by Dr Chalmers, that the

General Assembly was absolutely supreme in ecclesiastical or spiritual matters, the question would still remain behind—what are things civil, and what are things spiritual? Until the boundary could be marked out with mathematical precision between the civil and ecclesiastical provinces, no argument, to be called conclusive, could be built on the supremacy of the Church in matters ecclesiastical. In the case of voluntary churches, the boundary, he said, might be more easily discovered, as the civil magistrate might be barred, by their very constitution, from interfering; unless, indeed, their tenets and practices should be found subversive of good order or public morals. But this was not the case with a Church receiving State support and endowment. The State granted this support, because it was satisfied, from its own knowledge and conviction, that the doctrines taught by those, whom it took under its protection, were accordant with Scripture: And at this knowledge the State had arrived, not at the dictation of any body of its Christian subjects, calling themselves the spiritual office-bearers in the house of Christ, and laying claim to a government distinct from that of the civil magistrate, but by the exercise of his aggregate private judgment, interpreting holy writ for himself as a spiritual person. It was well known, that articles of government demanded by the Church, when taken into connexion with the State, had never been granted; and although some stress had been laid, he said, out of doors, upon what the Duke of Wellington had given as his opinion, in a letter to Lord Aberdeen—namely, that he saw little difficulty in adjusting the differences that had arisen; as the Kirk had only to define her spiritual jurisdiction, and an act of Parliament might be passed to sanction and ratify this jurisdiction;—he thought this declaration of his Grace could not amount to more, than that the State would again take up the place which it occupied, when the compact was originally entered into with the Church, and would give to her claims its best consideration—sanctioning them so far as it might see proper; and thus again exercising the right of private judgment vested in those whom it represented. It did not mean, that the State would make Popes of the Church courts, and take from their hands the interpretation of holy Scripture, as from an authority that was inspired and infallible. When the Church received with thankfulness, as

she did, the statute of her establishment from the State, it was on conditions, which she became bound faithfully to fulfil. "Is it possible," he asked, "to imagine, that where the errors and corruptions of Popery were on all hands disclaimed, the Church, in receiving this statute, also received the exclusive power of interpreting the law for herself?" Then, he ventured to submit, there never would have been any Reformation from Popery at all. The Sovereign, he contended, was in this country the fountain of law and justice; a maxim which, properly understood, meant that the sovereign declares what the law is, as laid down by the principles of everlasting truth and justice; and, in a Christian country, consequently as found in the Christian Scriptures. But the sovereign, meaning thereby, under the constitution of this empire, the Three Estates of the realm, must of necessity delegate to functionaries to determine what the law, once laid down, really is, when a question arises between parties subject to its enactments, whether these parties be individuals or public bodies: and he could not imagine how a more deadly blow could be aimed at all law and order, than by the anathemas, which the reverend Dr Chalmers had poured forth against the judges of the land, the constituted interpreters of that law, which the Sovereign, taking the Scriptures as his standard, had enacted. To the law as administered by them, the sovereign himself, in his executive character and capacity, was amenable: to argue that a Church or society of Christians, established and endowed by that law, was not equally subject to its authority, he held to be most preposterous and absurd. These principles he then applied to the case before the Assembly. Those, he said, who had sanctioned the libel under notice, charging the ministers of Strathbogie with a crime, because they had obeyed the courts constitutionally competent to interpret the law, might be beset by difficulties, whether they advanced or retreated from the position which they had taken up. But should they advance in this perilous course, where, he would ask, would they land? Their censures must not be confined to the seven ministers of Strathbogie, upon whom, no doubt, fell the immediate shock. But others also must be warned to "put their house in order." The Assembly was applying its Spiritual Independence Declaration of 1838 in the present instance.

In that Declaration the Church had asserted her intrinsic power to enact laws of her own authority; and her determination to punish those, whether ministers or members of the Church, who did not obey these laws; “and can you wonder,” said the reverend gentleman, “that the alarm, occasioned by this threatened deposition, is not confined to ministers alone;—that the intelligent body of Scotland are this day arrested in fearful suspense to behold the result of this awful cast in the game of ecclesiastical polity?” But, added he, the deposition might take place. It had been somewhat prematurely, indeed, intimated by Dr Chalmers, who had left the house, that this was the fate that awaited the seven ministers. How far this sentence, when passed, would carry along with it the loss of their temporalities, he (Mr Bissett) was not lawyer enough to say; but this, added he, “I will venture to say, that if the civil magistrate, having ordered the act, for which those ministers are suffering, to be done, cannot protect them in the discharge of their duty;—if he be precluded from inquiring, whether this deposition be ‘for just and good cause,’ I must think his power ‘to take order’ in the Church a mere mockery—an empty name.” If, said he, the magistrate should pronounce the cause to be neither just nor good, and refuse compulsory execution, let the Church look to where she is. Let her take care, lest men passing by deride her, that she began a labour which she was unable to finish. But if, on the other hand, the civil magistrate be obliged to execute, as the servant of the Church, whatever sentences the majority of the General Assembly see fit to pass, he (Mr Bissett) ventured to foretell, that the magistrate would have no sinecure office. All who had countenanced the Strathbogie ministers, as they were partakers of their offence, so must they be sharers in their punishment. “But,” said the reverend speaker, in concluding a very powerful address, “in whatever way the matter may this day be determined, my part is taken, my mind is made up. I have preached for these gentlemen since their suspension; I have assisted them in dispensing—or, in the Rev. Dr Chalmers’ language, in *desecrating* the Sacrament of the Supper, and I never performed any act with greater satisfaction to my own mind. In the happy days of Charles II. and James II.,—from which, no doubt,

the precedent is now drawn—letters of intercommuning were first published, putting under the ban of the law, all who should countenance or harbour the rebellious ministers. You may now publish such a bill of intercommuning. I tell you I cannot—I dare not obey it. What I have done in regard to these brethren, I will, if God spare me, do again. I will take counsel of no man, whether when a brother is sick and in prison, I ought to visit him—whether when the rod of the oppressor is laid upon him, I ought to break that rod. Reverend sir, let me conclude by saying, that he who ruleth his spirit, is greater than he is who taketh a city; and that to retreat will gain you more sure and lasting honour in the eyes of all intelligent men, than to advance—were you even sure that, by advancing, you would take the citadel of the country, and carry off the palladium of at once civil and religious liberty.”

The speech of Mr Bissett, on this occasion, fell most unwelcome

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on the ears of the majority of the General Assembly.

He gave them a fairer and more honest warning of the dangers that lay before them, than any other member of the Moderate party had yet ventured to portray. The supremacy of the civil power, in matters ecclesiastical, was boldly and fearlessly advocated; and the Assembly was, moreover, placed in a manifestly false position in regard to the Strathbogie ministers, and the censures which had overtaken them, so long as discipline was not extended to Mr Bissett. The sound Protestant principles of the Reformation were set forth by him in a manner, as able as it was unambiguous; and the open defiance which he hurled at the popes of presbytery, was felt to be, on his part, no idle bravado. To the question as put by him, no attempt was made to reply, although it must have been evident to all, that he had touched on the very essentials of the controversy. The greater importance was, however, attached to what fell from Mr Bissett, that he was well known to speak the sentiments of a large body of ministers in the north, who had raised the standard of “no surrender,” in the combat in which they were now engaged with the majority of the Church; and of whose zeal and activity in support of their persecuted brethren of Strathbogie, no relaxation could be expected—callous as they were to arguments, which cooled the ardour, and paralysed the exertions

of not a few in the south. In the contest which Mr Bissett had so long carried on with unwearied energy, both in the synod of Aberdeen and the General Assembly, he had to encounter coolness and lack of countenance in quarters where he had the best reasons to have expected a warm support ; but, to the worthy “Aberdeen doctors” of the nineteenth century, was the Church of Scotland mainly indebted for that thorough cleansing from Popish principles and pretensions, which she was at length able to achieve in the General Assembly of 1843.

Dr Cook held it to be beyond all doubt that, if the sentence of
 21. deposition, so broadly intimated as the result of the
 Dr Cook. impending question, should be pronounced by the whole Assembly, it would be null and void. It was, he said, at the root of all civil and social subordination, that there should be a civil authority which must be supreme—an authority recognised alike by reason and revelation. To this authority the Confession of Faith of the Church of Scotland demanded obedience alike from churchman and from layman ; and obedience to this authority duly and competently put forth, the Strathbogie ministers had yielded. To punish them, as was proposed, for that for which they deserved the approbation of the Church, was, of all attempts that ever were made by spiritual power and domination, the most preposterous and the most criminal. No doubt these ministers had disregarded the Veto law of the Church ; but not, let it be observed, until that law had been pronounced illegal by the supreme civil court of the country—to which court, too, the Church herself had carried the question ;—not until through the ordinary process of the law, and having its penalties placed before them, they had been called to disobey it. It had, indeed, been argued, that the Veto law referred to what was spiritual ; and that “matters spiritual” were, by the statutory law, confirming the inherent powers of the Church, subject only to the ecclesiastical judicatories. He denied that the Veto law applied merely to “matters spiritual.” It trenched, and that deeply, on the patrimonial rights of patrons and presentees ; and if it changed the law of patronage but in the slightest manner, it ceased to refer exclusively to “matters spiritual ;” and the whole argument, founded on the assumption

that it did, fell to the ground. The Church had uniformly acted on the principle, that while judgment, as to qualifications, lay with her by statute, the right to have his qualified presentee inducted to the benefice, lay as unequivocally with the patron. These principles the law of the land had established; and it followed, that they could not be modified or changed, except through the medium of the legislature. From 1560 to 1567 the Popish clergy kept possession of the temporalities of the Church; and although the Estates had declared the doctrines of the Reformed clergy to be consistent with the pure truths of the gospel, those who preached them were necessarily maintained by voluntary contributions: but, so soon as stipends were set aside by the State for these ministers, patronage was recognised; and when the Protestant became the Established Church in 1567, the presentation to livings was specially reserved to "the just and ancient patrons." This arrangement the Church thankfully received; and for a time she was perfectly satisfied, so long as examination and admission pertained to her. The erection of the presbyterian polity became the next object with the Reformed clergy; and this was at length accomplished by the statute of 1592; but, so far from adopting the rule laid down as to the election of ministers in the Second Book of Discipline, the Estates adopted the principle sanctioned by 1567, that examination and admission should be in the Church courts, but that patronage should remain where it was; and that presbyteries should be bound and astricted to receive and admit the qualified presentee of the patron. With this arrangement the Church professed herself satisfied, although it was very well known, that many of her leading ministers would have preferred the system sanctioned by the Second Book of Discipline. The Church, in those days, discovered no interference in this arrangement, on the part of the civil power, with matters belonging to the spiritual jurisdiction. The appointment of ministers she fully admitted to be a matter civil, for which, if dissatisfied, she could only obtain a remedy through parliament; or by separating themselves from the Establishment, and exercising the right of regulating matters for herself; an act which, as implying the high sin of schism, does not appear to have been ever contemplated. At subsequent periods, when the Church gave this law both to the

Estates and to the army, and when she did abolish patronage, it was not by her own authority—as she had now taken upon her, under the Veto Act, to limit and restrict it—but through the authority of parliament, sought and obtained. It was with the permission of parliament, that the Church framed her directory, about which so much had been said, as a proof of her inherent powers and rights in the settlement of ministers. The Restoration saw patronage replaced in the Church, and this again by act of parliament; and the Revolution beheld it once more—but always under the same authority—undergoing a modification amounting to abolition. From the law, as settled in 1690, the greatest heats and dissensions had been found to flow; and the legislature again interfered, and restored patronage, as it has existed under the acts 1567 and 1592. Since that period, and particularly of late, the most vigorous attempts had been made to prevail on the people of Scotland, again to demand a change, and a repeal of the act of Queen Ann, 1711—an appeal, however, which had never been nationally responded to. He contended, that from all this historical detail, it followed clearly, that as patronage is a civil right, the attempt to modify the law, as was done by the Veto Act, was a stretch of jurisdiction, as much unknown to the constitution and practice of the Church, as to the law of the land. The Veto, therefore, was in every point of view an illegal act; and to punish men who refused to respect it, simply implied a power in the Church to punish her ministers and members, if they would not commit a crime at her bidding! A reverend doctor (Chalmers) had himself declared, that he once warned those who passed this act, that it could not be carried into execution, without the aid and sanction of parliament. He had called it “a blunder,” and but very lately he had pressed all this anew upon public attention. It had been admitted on all hands, that the Church courts were not entitled to interfere in matters civil; but it had been urged, that the Veto law did not infringe on civil rights, because it was always a statutory limitation upon patronage, that presentees should not be intruded on parishes contrary to the will of the people; and the Veto only fixed this limitation with somewhat greater precision. Such expressions, he said, had undoubtedly been employed as

“intrusion, contrary to the will of the people,” and they did occur in the Second Book of Discipline, and in the Acts of the Assembly; but he defied any one to point out a statute of the land, in which they were to be found: And if the Second Book of Discipline was to be grounded on as authority, then patronage, as fixed by the act of parliament 1592, must be illegal; for it is contrary to the rule laid down in that book. But the Church herself, he said, might be taken as interpreter of non-intrusion and “consent of the people;” and she will be found in 1645, when she was reaching her most powerful and palmy state, laying down, that the people, if they objected or refused to consent, should put in with all Christian meekness what exceptions they had against the man nominated by the patron. Five years afterwards, the nomination was transferred from the patron to the kirk-session; but the place of the people remained the same as under the act 1645; and the act of 1649 distinctly gave the judgment to the presbytery in the two cases that are there provided for—the one, where a majority object; and the other, where a minority dissent. In 1690, when patronage was given to heritors and elders, the people, if they disapproved, were to give in reasons, to be judged of by the presbytery; and under the act 1711 restoring patronage, when settlements still proceeded on the Call, the General Assemblies 1718 and 1719 enacted, that where sufficient objections were not given in, or offered to be proved, to the satisfaction of the presbytery, the settlement was to proceed. From 1719 downwards, no such idea entered into the heads of any, as that the Assembly could infringe the civil rights of the patron; and this inability was distinctly admitted in the directions given to commissions up to 1782, to take every opportunity of applying to parliament, to get rid of what was called—more within, than without the walls of the Assembly—“the grievous yoke of patronage.” It was, therefore, clear, he contended, from the view of the principles and practice of the Church, that the Veto Act could have no more force and validity ecclesiastically, than it had civilly; and that every minister was bound, as a faithful office-bearer in the Church, to disregard it; and that, consequently, even laying aside the proceedings in the civil courts, the ministers now under libel must be acquitted of having done anything con-

trary to the clearest principles of clerical law. But we were farther told, he said, that these ministers were bound to obey the mandates of their spiritual superiors; and that they were justly punishable for refusing this obedience—promised, as it had been, at their ordination. To this he replied, that this obedience was clearly promised, under the tacit limitation of its being exacted only in things lawful. Was it possible, he asked, to imagine that the obedience required, bound the party promising it, to commit a crime at the bidding of those to whom it was pledged? The very supposition was monstrous; yet, if the ministers at the bar were deposed, this monstrous supposition must be maintained. He admitted, that these ministers had disobeyed very explicit orders from their superiors; and if it had thus happened in things indifferent, and not coming into collision with their duty as good subjects, the censures of the Church might have fallen justly upon them. But the order, given them to obey, was illegal, as he had shown, whether measured by the laws of the State, or those of the Church; and notwithstanding what had already happened to them, on account of their disobedience, their *status*, as ministers of the Church of Scotland, was unaffected; and would still be so found, even if sentence of deposition should now be pronounced against them. Dr Cook concluded by moving, “that the General Assembly dismiss the libel, and declare, that the ministers named in it, and against whom it was directed, are in the same situation in all respects, as to their ministerial state and privileges, as if such libel had never been served, and such proceedings had never taken place.”

The speech of Dr Cook, on this occasion, was distinguished for
 22. alike the clearness, with which he laid down the
 Remarks. principles that ought to guide the Assembly, and the closeness of reasoning, to which he adhered in addressing himself to the question really before it. It displayed that acquaintance with the question in all its bearings, which might have been expected from the Historian of the Church of Scotland; and in bringing the general principles of law and jurisprudence to bear upon it, left little or nothing to render his argument altogether triumphant. In maintaining, that the Strathbogie ministers, in

disregarding the Veto law, were in the discharge of a duty, which they owed alike to the State and to the Church, instead of being chargeable with the crime for which they were now libelled, Dr Cook occupied a ground liable to no ambiguity, and certainly placed the Assembly in the most false of all positions, when proceeding to extend its censures to these ministers, while their advocate and eulogist escaped from a similar visitation. While the question of the legality of the Veto Act was in abeyance, Dr Cook and his friends, in deference to the opinion of the majority in the Church, had so far treated it, as consistent with the law, as to carry it into effect in the inferior courts; but when, on the Church's own appeal, the highest civil tribunal in the land pronounced it illegal, the case assumed a very different aspect, and demanded from them a different course of conduct; and when called upon to condemn what they conscientiously regarded as praiseworthy—obedience to the law as competently laid down—they had but one path to pursue. As the proceedings of the dominant party in the Assembly advanced to greater and greater cruelty and injustice towards the Strathbogie ministers, and involved a more and more open and flagrant breach and contempt of, alike the constitution of the Church, and the law of the land, Dr Cook and his friends took up a more and more decided position in defending these ministers. Every disposition which, since the beginning of these unhappy strifes, the Moderates had evinced to restore and preserve the peace of the Church, had proved unavailing. The more that they had appeared willing to concede to the majority, the more had they been met by a determination to carry the claims and the censures of the spiritual courts to the utmost extent; and when, at length, the limit beyond which they could not be carried had been reached, the reproach—far from discreditable—under which they had often been laid, of not meeting their opponents on the field, to which they were so boldly challenged, was wiped away. After the speeches of Mr Bisset and Dr Cook on this memorable debate—this really closing act in the Non-intrusion drama—the line of demarcation between the parties dividing the Church of Scotland stood forth broad and prominent. The one yielded to the civil magistrate the supreme jurisdiction, which he had claimed in ecclesiastical matters,

and declared that they would give a willing obedience to his decrees : the other refused to him the jurisdiction demanded, and with equal solemnity, and, doubtless, with equal sincerity, maintained that this supreme jurisdiction was lodged, by the Great Head of the Church, in the hands of those whom he has appointed " office-bearers in His House;" and they declared that to Him alone, through these His instruments, would they yield allegiance in matters spiritual; and, while they held themselves as bearing this commission, would exact, under spiritual pains and penalties, obedience from all ministers and members, over whom they were placed in spiritual authority. It was now becoming a matter more and more beyond all doubt, that such a commission could not be recognised by, nor given effect to within, the Church of Scotland. Now that its supporters have seceded from her communion, it may be put forth over all who choose to submit their necks to the yoke; and so long as neither public peace nor public morals are outraged by their doings, they may be indulged in the harmless, but somewhat singular, boast of being the only Free Church in Scotland.

Dr Cunningham did not address himself to the topics touched upon
 23.
 Dr Cunningham. by Dr Chalmers, who had made the first motion. He did not think, that they bore very closely on the question before the house. The whole of this question, in his (Dr Cunningham's) opinion, was this—Did the facts, set forth in the libel, constitute an ecclesiastical offence, warranting the infliction of the highest censures? The facts admitted by the unfortunate men at the bar amounted, as he maintained, to a breach of the laws of the Church—to a violation of their ordination vows—and to a sin against the Lord Jesus Christ. In so characterising them, he assured the Assembly, that he would never consent to the deposition of any man from the holy office of the ministry, of whom he was not prepared to aver, and to prove, that he had been guilty of a sin against the Lord Jesus Christ; and hence he believed, that the sentence which they were called to pronounce, would be ratified in heaven. The charge against these men was, substantially, that they had acted in opposition to God's holy Word—to the laws of the Church—and to the allegiance which they owed to Jesus Christ. It had, he said, been assumed, that they were libelled for acts

done in obedience to the civil courts—not voluntary acts, but acts which they were laid under a legal compulsion to perform. No man, he averred, who had read the libel, could maintain this position. They were libelled for purely voluntary acts—the result of their own judgment, that these acts were an important part of their duty. They had, notwithstanding their suspension, continued to preach and dispense ordinances; but the civil courts had never ordered or compelled them to do so, and they could not, therefore, plead legal compulsion. In regard to the charge, that they had gone to the civil courts to obtain reversal of the censures of the Church, that also, he maintained, was a voluntary act. The civil courts, he said, might have judged, on the application when brought before them; but they had not ordered this application; and thus the whole argument, that they had only obeyed the civil courts, fell to the ground. Their position, he contended, was that of directly breaking the laws of the Church; and in proof of this being a crime, or ecclesiastical offence, he referred to the Act of Assembly 1648, declaring that every suspended minister who continues, notwithstanding, to discharge any of his functions, should be deposed; and hence, he argued, there was no option before the house but to proceed to the sentence of deposition. But these men, he said, stood further condemned under the Act of Assembly 1582, which prohibited any office-bearer in the Church from withdrawing himself from the ecclesiastical jurisdiction. He held that Act of Assembly to be the law of the Church, and it warranted even summary excommunication for the offence, of which the men at the bar had been guilty, although nothing more, he added, than deposition was intended in the present case. He then adduced the authority of the “Godly Acts of Ancient Counsels,” and the canons of the Church in the third and fourth centuries, to show that ecclesiastics, attempting to exempt themselves from spiritual jurisdiction by the help of the secular arm, should be excommunicated; adducing these authorities, as he said, not as directly applying to the present case, but as showing that the laws of the Church of Scotland were in conformity with what had been the law of the Christian Church in all ages. He next maintained, that the men at the bar had broken their ordination vows; and in saying so, he did not mean to charge

them with perjury. They, no doubt, thought that they were carrying out these vows; but they had solemnly sworn, that they would obey the judicatories of the Church, and what was now their position? It was not certainly in accordance with the obligations they had come under. They had, he said, withdrawn their obedience from the Church courts. Nor was it any answer, that there were competing claims upon this obedience. It was true, he allowed, that no law of the Church could lay them under an obligation to disobey the law of God,—the moral law. But there was nothing sinful in the obedience which the Church required of them; and nothing, therefore, inconsistent with the vows which they had come under to the civil magistrate: And, besides, as he had shown, the civil courts had not called upon them to exercise the functions of their ministry. But he maintained, further, that had there been a competing obligation, that plea could not be set up in the Assembly; and, as to the argument, that they were only enforcing their civil rights, he had just to ask, if a man was under a necessity of enforcing these rights, in all circumstances, by resorting to the pains and penalties of the law. He denied, in reference to another argument, that these men had ever been required by a majority of the Assembly to break the law of the land. The duty exacted of them, the obligation required from them, was, that they would abstain from enforcing their alleged civil rights to the utmost extent, and with the utmost rigour of the law; and this obligation, he said, was most clearly included in their ordination vows. The only limit, he maintained, was where they were required to commit sin. He denied that, when suspended, there was any necessity for their following out the rigour of the law; and he contended that they were precisely in the situation of those who, having entered a corporation, had bound themselves not to employ the legal privileges they might possess against the society into which they had been admitted. They ought, therefore, he argued, to have renounced the *status* and privileges of ministers of the Church of Scotland before they went into the civil courts. They were not entitled to use the privileges bestowed by the Church against the Church. They were not, indeed, he admitted, bound to sin; but circumstances might arise, in which they were bound to suffer. It had,

however, been argued, that these men had taken the oath of allegiance to the sovereign, and were bound to respect it. But he contended they were not now called upon to account for anything they had done in regard to the civil power. The oath of allegiance, he said, merely regarded the things that were Cæsar's, but threw no light on the things that were God's. The sovereign had no more authority to interfere in ecclesiastical matters, than to levy taxes without the consent of parliament; and the Revolution, as he contended, had swept away completely every vestige of the supremacy of the Crown in matters ecclesiastical, once upheld in this country. The Assembly was, therefore, he said, at full liberty, without any regard to the oath of allegiance, to inquire if these men had not committed a sin against the Lord Jesus Christ, the only Head of the Church. He maintained that they had; and the sin consisted in this, that they had deliberately and voluntarily administered ordinances when under suspension; and had made a voluntary and deliberate appellation to the civil court, to remove the ecclesiastical censure imposed upon them, and to restore them to the exercise of their ecclesiastical functions. He admitted that the sentence of suspension might have been erroneously pronounced, and, in this case, disobedience to it might not have been a sin against Christ. But, in this case, he asserted that the appeal must have been taken *in foro conscientie, in foro Christi*, against the office-bearers of the Church, and not *in foro Cæsaris*, who had no right to interfere, but to whom, notwithstanding, the appeal had been made. By calling on the civil power to suspend the sentence pronounced against them, and to restore them to their spiritual functions, they had, he said, renounced their allegiance to the Lord Jesus Christ, the great Head of the Church. Had they protested against the sentence as passed, *clave errante*, and appealed to Christ, their persevering in the discharge of their spiritual functions might not have been disavowal of Christ's authority; for the sentence might have been one, which fidelity to Christ demanded of them to disobey. But in appealing to Cæsar, in going to the Court of Session, and seeking the aid of the secular arm, to restore them to their spiritual functions, consisted the rebellion, for which they were now justly punishable. The course, which they had pursued implied a denial,

that to the office-bearers of Christ alone belonged "the power of the keys." In interfering, as it had done, the Court of Session had, he maintained, assumed "the power of the keys;" and had thereby broken both the laws of God and the law of the land, and been guilty of great sin. And the men at the bar had been the authors and originators of all this sin. This, he contended, was the spirit that characterised the whole of their proceedings, and made their offence neither more nor less, than high treason against Jesus Christ! They had aimed a blow at the very existence of the Church as a distinct society, exercising functions and enjoying privileges derived from Him, and bound to be regulated in all things by his Word; and they had done that, which plainly implied that they had taught and held, that the courts of Cæsar are entitled to exercise jurisdiction in ecclesiastical matters. But, said he, "we never can admit the principle, that the civil courts can interfere with our duty to Christ. We do not allow them to have power to regulate everything connected with the settlement of ministers." There were matters, he said, in this settlement which were properly and purely ecclesiastical; and because things civil were mixed up with things ecclesiastical, it did not follow, that the civil courts were to be let in to a jurisdiction over the whole matter. The examination and admission of ministers were in the Church; and whether an individual was to be ordained or not, was a matter which belonged not to Cæsar, but to God—not to the court of Cæsar, but to the court of Christ. He maintained that the limits between the two provinces, which were perfectly distinct from each other, were at once ascertainable by the test, that all matters ecclesiastical are necessarily comprehended in the execution of the ordinary business of the Church of Christ, wherever that Church exists; and, guided by this test, the admission of ministers was an ecclesiastical affair, and not subject to civil control. And, added he, in the exercise of our jurisdiction in regard to it, we are under no obligation to render obedience to the decisions of the Court of Session, which is the mere creature of the State. As regarded the civil consequences of the sentence of deposition, he cared nothing, he said, what the civil courts might do. He was only bound, looking to the Word of God, and the standards of the Church, to

ascertain his own duty, and to do it faithfully and fearlessly. If civil consequences were found to follow the sentence of deposition, other men, he said, would be ordained in the stead of those now at the bar. If these consequences did not follow, still other men would be sent by the Church to the parishes where these men formerly laboured; and they would be supported from some source or other. If the parties at the bar were now deposed, it would be an interference with the spiritual independence of the Church, if she should be compelled afterwards to recognise them as Christian ministers, or to admit the validity of the ordinances, which they might administer; and to this the Church, he added, would never submit. He believed, on all these grounds, that the sentence of deposition that might be pronounced on earth, would be ratified in heaven.

The speech of Dr Cunningham on this occasion did not fail to
 23. produce—as did all the speeches of this talented
 Remarks. churchman—a very powerful effect on the Assembly.

No one could better distinguish the real question at issue, or was either less likely to be diverted from it, by giving scope to his own imaginative flights, or to be led astray from it, by the fantasies of his opponents, however artfully employed. He stated clearly, and at once, the question really before the house—Did the facts set forth in the libel, constitute an ecclesiastical offence warranting the infliction of the highest censures? And he admitted, substantially, that this question was to be decided by the answer given to another—Did the Revolution which settled the government and discipline of the Church of Scotland, as it now exists, warrant the civil power in laying injunctions on ecclesiastical persons, contrary to those imposed upon them by the ecclesiastical tribunal? When Dr Cunningham maintained, as he did, that the Revolution swept away every vestige of the supremacy of the Crown in matters ecclesiastical, once upheld in this country, he greatly misunderstood, or misrepresented, the principles which at that period were stamped as constitutional alike by law and practice. It would not be very easy to reconcile with the theory which he laid down in this debate, the fact that King William dissolved, prorogued, and convened General Assemblies, upon his own sovereign authority. That these were exercises of the royal supremacy in

matters ecclesiastical, seems beyond all doubt or controversy. The largest element which, according to our fathers in 1596, entered into "the liberties of the Kirk," was the right to hold Assemblies, independent of the royal will and sanction; and upon this claim, urged on the one hand, and resisted on the other, turned all the great and stirring events of that period. The acts of King William, acquiesced in by the Church after the Revolution, are in themselves quite sufficient to show, that the constitutional rights, which the State, after a long struggle between 1580 and 1610, wrested from the Kirk, were fully recognised at the Revolution. When Dr Cunningham argued, that the Strathbogie ministers were "not entitled to employ the privileges of the Church against the Church," he reasoned soundly. Had he said, as the real state of the question demanded of him to say,—that they were not entitled to employ the privileges of the Church against a majority of the Church violating her laws, the absurdity and illegality of his position would have been apparent. But it may be noticed, in passing, that soon after this period Dr Cunningham himself, whilst within the Church, was found agitating and urging her members from one end of Scotland to another, to desert her communion!—in this manner, beyond all question, employing the *status* and the privileges, which the Church bestowed upon him, against the Church! But while Dr Cunningham could see and state the question with all clearness, it is impossible not to notice the very vague generalities in which he dealt, when he proceeded to its illustration; nor is the boldness with which he laid down the dogmata necessary to support his views, less remarkable. There was, however, something of a more sinister character in the disingenuousness displayed in maintaining, that the Strathbogie ministers were not, in fact, libelled for acts done in obedience to the civil courts; and Dr Cunningham must have had singularly strong confidence in the credulity of his audience, when he ventured on such an assertion. No sophistry could disguise the fact, that this obedience—or rather resolution to obey—was at the root of all the proceedings against these ministers; and as the justification of all those parts of their conduct, on which the libel really fastened, resolved into this obedience,

as demanded by the civil courts, it was substantially the crime with which they stood charged; and had the indictment, with which they were served, been honestly framed, it would have occupied the most conspicuous place in it. The argument, that these ministers, when suspended by the Church, were under no legal obligation to continue discharging their spiritual functions, because the Court of Session had not in its judgment ordered them to do so, was utterly unworthy of Dr Cunningham, who must have known, that every minister of the Established Church is at all times under a legal obligation to dispense the ordinances of religion to his parishioners, if qualified to receive them; and that in dispensing these ordinances after their suspension, the ministers of Strathbogie were only at once maintaining the consistency of the position which they had taken up, and acting in strict obedience to the law as it affected that position. The weakness of this part of Dr Cunningham's reasoning, might indeed have been inferred from the authorities on which he rested it, the acts of Assembly 1582 and 1648—periods of the Church of Scotland, the very last from which precedents or rules to guide her conduct ought to be drawn. The "godly acts of ancient councils," and the canons of the Church, in the third and fourth centuries, before the Christian Church had been incorporated with the State, were equally inapplicable, when the whole question arose out of the terms and conditions of this connexion, as found under the laws and constitution of Scotland. When Dr Cunningham asserted, that there was nothing in the obedience required by the Church of the ministers of Strathbogie, inconsistent with the vows which they had come under to the civil magistrate, he just took for granted the whole matter at issue; and built his argument on the most manifest *petitio principii*. When he denied that these ministers were ever required by the majority of the Assembly to break the law of the land, he forgot the ground which, legally or not, was occupied by them, that this majority, in suspending them, had violated this law; and hence, they concluded, that had they homologated this act, by giving effect to the suspension, they would have been in the position of *participes criminis*. The illustration drawn by Dr Cunningham from the mem-

ber of a corporation, who binds himself not to employ the legal privileges he may possess against the society, into which he has been admitted, has evidently its limits; and always supposes that this society is requiring nothing of him which is inconsistent with, or in violation of, the law of the land. When Dr Cunningham imputed to the Strathbogie ministers, as high treason against Jesus Christ, that the course which they had pursued implied a denial that to the office-bearers of Christ alone belonged "the power of the keys,"—he forgot that the Westminster Assembly itself—the Scottish Commissioners concurring—submitted to the Houses of Parliament the question of "the power of the keys:" and at the pleasure and by the will of these Houses, this power was defined and limited!

Dr Bryce, in addressing the Assembly, said that the last ground on
 24. which the reverend gentleman, who had just spoken
 Dr Bryce. before him, had placed his support of the motion made by the learned Professor of Divinity—namely, that the conduct of the gentlemen at the bar amounted to "high treason against Jesus Christ"—had invested the question with an awful solemnity. But he (Dr Bryce) felt that he could not enter on it under this aspect. His mind revolted from what he thought the daring and impious presumption of treading on such ground. The language was not, indeed, altogether new within the walls of a General Assembly, and those who now employed it would, no doubt, seek for precedents in what they esteemed the days of the church's "greatest glory and prosperity." It was to him (Dr Bryce) a fearful feature in the existing posture of affairs, that such precedents should be dragged from the oblivion to which, he had hoped, the common sense of mankind had consigned them; and he would not contribute towards the scandal, which such arguments brought on the Protestant Church of Scotland, by even attempting their refutation. He was reminded by this charge, and by the condemnation that was to be built upon it, of an event in the history of our Saviour, which, if it did not perhaps furnish a key to its real source and foundation, (were those who ventured on it thoroughly to probe their own hearts,) might at least supply a lesson for their guidance, in the bright example which it placed before them. When the

disciples of our Divine Master returned from a mission, on which he had been pleased to send them, they told him—"Master, we found this man casting out devils in thy name, and we forbade him, because he followed not us." Let reverend gentlemen take care, when they accused the ministers at the bar of desecrating the solemn rite of ordination, by giving to their brother at Mar-noch to teach and comfort the sick in soul, and to cast out the demon of unrighteousness, that the accusation springs not from this source,—“because he followed not us.” That which these ministers did was done in the name of the Great Head of the Church; and now, when they were brought up for condemnation, as was the man whom the disciples found casting out devils, he would entreat the house to bear in mind the example of our Divine Master, who alone knows the heart of man, and to say like him, to their accusers, “Condemn them not.” Who, he asked, would dare to say, that the individual who had been set apart, by the gentlemen at the bar, to the holy ministry, in the name of Jesus, may not, in the hands of the Great Head of the Church, prove the happy instrument of turning many to righteousness? Who would take upon himself to affirm, that the deed, although unsanctioned by this court, will not find admittance into those books out of which all men shall one day be judged, and that over against it may be placed the “Well done, good and faithful servants.” Let it, indeed, he said, be brought home to the satisfaction of the house, that this deed was done in violation of the laws which have been enacted for the outward government of the Church of Scotland, and let its perpetrators suffer the penalties of that law. But let the Assembly hesitate to pronounce it, even in that case, to be “high treason against Jesus Christ,” when the offence may be no more than that they “followed not us”—an offence, which the very gentleman who had spoken of it as “sin against Christ,” had himself admitted might be according to His will and word. “Pronounce and register the sentence of deposition, if you see fit, in your own perishable records, but, in the name of all that is incumbent on you, as yourselves frail and erring mortals—all that is pious, Christian, and charitable towards others—speak not of its being ‘ratified in heaven.’” He would ask, in his turn,

how it happens, that if the ministers at the bar were in truth guilty of "sin against Christ," in administering ordinances after the Church had suspended them, those of their parishioners, who had received these ordinances from them, stood acquitted of a similar crime? Yet he (Dr Bryce) had heard of no proceedings against them. They were equally in violation of the "Declaration" of 1838; and they were equally within its penalties. It had, indeed, been said by the last speaker, that if the ministers had appealed *in foro conscientia*, to the court of Christ, and not in *foro Cæsaris*, to the Court of Session, then disobedience of the Church's orders might have been no disavowal of Christ's authority. Now, it might be admitted, that there existed no necessity for the application which they had made to the civil court; and he believed that, without its aid, and without the aid of the process that followed it, they would have remained in full civil and ecclesiastical communion with the Church of Scotland; and that, acting together, and in opposition to the minority recognised by the Assembly as the presbytery of Strathbogie, they would have been found to constitute that presbytery as known to the law. But he had yet to learn wherein consisted the guilt of this application, admitting it to have been somewhat supererogatory. But it was time, said he, to turn from what the gentlemen at the bar might or might not have done, to look, at what they actually did. On all hands it was admitted, and he was glad the question was so narrowed, that they had obeyed the law of the land—not indeed as interpreted by the Church courts, but as laid down by the civil tribunals; and holding, as he did, that when men gave unto Cæsar what was righteously Cæsar's, they gave unto God what was God's, he saw nothing but what deserved the highest approbation in the conduct of the parties then standing as criminals at the bar. But Cæsar, it was said, had violated the territories of God, in assuming to himself to interfere in the government of Christ's Church—to intermeddle in the management of Christ's house. This had been the burden of the speech to which the house had just listened. But what, he asked, said the Confession of Faith as to the duty of Cæsar in matters ecclesiastical—in the government, as it was called, of Christ's house and kingdom? This part and parcel of the statute

law of the land—this acknowledged standard of the Church—declared, in express terms, that it was Cæsar's duty "to take order" that all abuses within the Church be prevented or reformed. Would any man say, that this merely meant that the civil magistrate was just to take his orders from the Church courts? And, if it did refer to something like a jurisdiction of his own, how was Cæsar to know, except on competent complaint, that abuses existed? Yet, for making this complaint, without reference to its justice or merits, the gentlemen at the bar were to be deposed! Nay, let the complaint be against the most flagrant injustice and tyranny, the doctrine of the Reverend Professor of Divinity in the University of Edinburgh, that day openly promulgated, was, that there is no redress or protection! no remedy for the suffering churchman—no relief for the lay member, any more than for the clergyman, of the Kirk of Scotland! It had been laid down by the learned Professor, that, let the nature of the law be what it may, which the churchman is called upon by his ecclesiastical superiors to obey, obey it he must. And, under cover of this general doctrine, the learned gentleman had deemed all reference to the Veto law of 1835, and its declared illegality, unnecessary! The framers of the libel on the table had led the example of most scrupulously abstaining from the remotest allusion to it; and the last reverend member who had addressed the house, had boldly challenged any one to show, that this libel recognised any connexion between acts done under the Veto law, and the proceedings for which the ministers at the bar were indicted! But the real foundation and merits of the question were not to be thus shuffled off. He (Dr Bryce) maintained, that the whole of this question rested on the merits of the Veto Act. If this act were according to the law of the land, then the libel on the table would be relevant, and the parties would be righteously punished; but, if illegal, then, of course, the very opposite conclusions must be come to. If Cæsar, therefore, had duties imposed upon him by the law, both of Church and State, in the matter of ecclesiastical government, then other parties had rights bestowed upon them; and one of those rights was the right of appeal to Cæsar, when, as churchmen, these parties found or fancied themselves aggrieved by an ecclesiastical sentence. Of this right the

parties at the bar had availed themselves. It was not, indeed, an appeal, in the proper sense of the word, which they had brought before the civil courts, for, by law, these courts could not review or reverse the sentence of the ecclesiastical courts upon their merits ; and the Court of Session had not, as again and again alleged by the last speaker, reversed the sentence of suspension, and restored the ministers of Strathbogie to their spiritual functions. It was a *refugium*, which these ministers enjoyed against the ecclesiastical court violating its statutory duties ; and all that the civil magistrate had done was to find, that, in consequence of this violation, these ministers had never been suspended at all. This, he said, was the happy Protestant constitution under which we lived in Scotland. The learned Professor of Divinity might hold it to be a crime against the sovereignty of Christ in His own house, in any churchman to seek this *refugium*, but what said John Knox himself ? “ I will stand content,” said he, “ to show, that it is lawful to God’s prophets, and to preachers of Christ Jesus, to appeal from the sentences of the visible church to the knowledge of the temporal magistrate, who, by God’s law, is bound to hear their cause, and to defend them from tyranny.” The libel on the Assembly’s table might, he said, aver it to be a crime to call upon the civil magistrate to “ take order ” in the matter of *Ordination*, but what said Samuel Rutherford, when met by the objection, that his doctrine on the power of Cæsar, in dealing with heretical teachers, would go the length of entitling the magistrate to order the Church to invest the candidate with the sacred character of a minister of Christ—that is, to ordain :—“ We deny not this,” says this father of the Second Reformation. And yet, said he, were we this day coolly told, that, in libelling and punishing the Strathbogie ministers, as was proposed, the Assembly would be treading in the footsteps of Knox and Rutherford ? But what, he further asked, had the Assembly itself done in the matter of appealation to Cæsar ? They had acted, in the Auchterarder case, on the rule and principle of Knox. They had just done that for doing which they were now about to depose the parties at the bar. In the Auchterarder case a complaint was competently made, to the civil magistrate, that one of those “ abuses and corruptions ” in the

government and discipline of the Church, which he was to "take order" should be prevented or reformed, had taken place. The magistrate entertained this complaint; and who were the parties whom this complaint had brought before him as defenders in the action? Was it not the Church courts themselves—the General Assembly itself? And what did the Assembly do? Most distinctly acknowledged the magistrate's jurisdiction in pleading to the action; and yet this very Assembly was now called upon to punish with the highest censures of the Church the gentlemen at the bar, for no other offence than following their own example. But the Church, in the Auchterarder case, had, he maintained, done still more. She not only pleaded before Cæsar, in the Court of Session, but when Cæsar, in that court, gave judgment against her, she appealed to him sitting on the Woolsack! It is true he also gave judgment against her there; and then, and not till then, she turned round and said, that Cæsar had stepped beyond his province. Could any man doubt that, if Cæsar had given judgment for the Church, we should now have found him lauded to the skies? We were, no doubt, told that, in the Auchterarder case, nothing but a question touching the temporalities was before him; and he went out of his way and decided a point spiritual—namely, the obligation of a presbytery to take on trials the presentee of the patron. He (Dr Bryce) would ask if this was not the point—call it civil or spiritual—which the complainant brought before him in the lower court; on which the defender pleaded and was defeated, and from which he appealed to the higher? And when the law of the case was thus settled by the highest authority in the country, and that upon the Church's own appeal to that authority, what other line of conduct could the gentlemen at the bar have pursued, than that which they adopted—obeying the law, as pronounced under the very shield and shelter of the Church's pledged admission, that, in whatever way this law might be declared to stand, it would receive her obedience. It was, he maintained, altogether inconsistent, unjust, and monstrous, to entertain and deal with this obedience as an ecclesiastical offence, relevant to infer ecclesiastical penalties. It was nothing more nor less, than to erect the discharge of a duty into the commission of a crime. Let such

a lesson be given forth to the people of Scotland, and let those who taught it look to the consequences.

Dr Robertson, of Ellon, could not forget that the primary and
 25. original cause of the painful case before the As-
 Dr Robertson. sembly was the resolution which the Strathbogie
 ministers had intimated, so far back as November 1839, that
 they would discharge the duty legally imposed upon them, as
 they apprehended, of taking the presentee to Marnoch upon
 trials ; and he expressed his extreme surprise, that this act
 should have been so completely blinked as it was in the libel
 before the house. It was not once referred to, nor hinted at, and
 he could not help regarding this as a most suspicious circumstance.
 He would ask why the framers of this libel had not come forward,
 and boldly made obedience to the civil court, when prohibited by
 the ecclesiastical, one of the counts or charges of the indictment ?
 So long as the act, lying at the root of the whole procedure against
 these gentlemen at the bar, was kept out of view, a full knowledge
 of the merits of the case could not be arrived at, nor could a sound
 and just judgment be reached. But, passing from this radical
 defect in the construction of the libel, he admitted at once that the
 acts set forth in it had been committed by the parties charged with
 them ; but he was quite prepared to show that, in committing
 these acts, they had broken no law which it was competent for the
 Church either to enact or to enforce ; and the act 1582, which had
 been rested on, was utterly inapplicable to the case. This act was
 framed to meet the case of Montgomery, who had accepted the arch-
 bishopric of Glasgow in contravention of the authority of the General
 Assembly. In doing so, Montgomery could plead no statutory sanc-
 tion. The Church, in abolishing the office, had violated no law of
 the realm ; and, in accepting of it, Montgomery could not plead that
 he was giving obedience to any statute, or exercising any right
 vested in him by parliamentary authority, and, consequently, no
 parallelism could be established between his case and that of the
 ministers of Strathbogie. But, besides this, he (Dr Robertson)
 contended that the act of Assembly 1582 was not now in force,
 and was altogether inconsistent with the act of parliament 1592.
 That statute, he said, withheld from, or at least did not bestow

upon the Church the whole of that discipline which she sought; and unless it was maintained that, after the passing of the Act 1592, an office-bearer in the Established Church might still be proceeded against, ecclesiastically, for non-compliance with those parts of the Second Book of Discipline which the State refused to ratify, it was impossible to hold that he might still be punished for availing himself of the protection which the law extends to all men. The statute 1592 was framed to obviate the jarring jurisdiction that had been set up—an object which yet remained unaccomplished, if the act of Assembly 1582 were still in force. In regard to the argument founded on the act 1648, he did not deny that ministers acting in opposition to a rightful sentence of the Church might be deposed. But the whole question was—Are the Strathbogie ministers acting in opposition to a sentence rightfully pronounced? And in this was involved the whole question of the Church's spiritual independence. The Confession of Faith, and the Books of Discipline, set forth the spiritual jurisdiction; but as far as it was ratified by act of parliament, so far the Church herself could not change or alter it, without the concurrence of the State. The argument, that if the obligation of the Church to receive and admit a presentee can be enforced by the civil power, then the civil power would be compelled to enforce ordination—which is a purely spiritual act—he regarded as altogether based upon a fallacy. And it proved too much; for, by the same rule, although the statute laid on the magistrate the obligation to call synods and assemblies, in the free exercise of his own discretion, and to submit for their consideration, when properly constituted, such matters as he may deem of importance for the interests of religion, yet as synods and assemblies must be constituted by prayer, and prayer is a purely spiritual act, therefore, to authorise the magistrate to interfere in calling these synods is to entitle him to interfere in matters spiritual! Nor did it signify, he said, whether the civil magistrate was regarded in his executive, legislative, or judicial functions; in one and all of these cases, the performance of a spiritual act was necessarily involved in the confessedly competent order of the civil body. Now, holding these principles as established, how was it possible, he asked, to suspend the gentlemen at the bar for the per-

formance of a statutory duty, involving no act of a mere spiritual character, than what must be involved in proceedings declared by the Confession of Faith to be perfectly competent to the civil magistrate? And hence his argument was, that the original suspension was incompetent on the part of the Church; and the act 1648 and its provisions were inapplicable to the case. The same reasoning, he maintained, applied to the second charge brought against them—that they had violated their ordination vows. No doubt, they had come under solemn obligations to submit themselves to their ecclesiastical superiors; and, no doubt, they had refused to obey the orders of these superiors; and they had done that which these superiors had forbidden them to do. But the question recurred—Were they at liberty to comply with these vows by refusing obedience to the injunctions of competent civil judicatories? Their oath of allegiance to the sovereign bound them to this obedience: Could their oath at ordination to the Church, taken afterwards, bind them to withhold it? It had been argued, he said, that, when brought into this position, the Strathbogie ministers ought to have delayed in the matter of the presentee to Marnoch. He (Dr Robertson) held a very different opinion. They were bound to discharge their duty, as they conscientiously understood it. To suffer, as they were told they should have done, would have been no compensation to a broken law, and in a court of conscience such a course could find no sanction. The duty must be done, and no compromise of any kind could be admitted. In regard to the third charge brought against the Strathbogie ministers, that they had been guilty of sin against the great Head of the Church, he found it was made to rest on the allegation, that when suspended—it might be wrongously—by the Church, they had appealed to Cæsar and not to Christ. They had not appealed *in foro conscientiæ*. How, he asked, could it be inferred from the facts of the case, that the parties at the bar had not made this solemn appeal to the great Head of the Church, when subjected to the sentence which they deemed unjust? Was this to be gathered from the mere fact, that they had not taken the formal step of doing so in the presence and hearing of the Assembly? This, he certainly thought, was a very slender foundation,

on which to rear the superstructure that had been raised. Nor did the argument rest on any better foundation, which assumed that, in applying to the civil courts, as the gentlemen at the bar had done, they had acknowledged the supremacy of the civil power in matters spiritual. Their petition to the civil power warranted no such inference. It went upon the supposition, that they were still ministers of the Church of Scotland, notwithstanding their suspension; and it only called upon the civil court to protect them in the discharge of their duties as such. They did not pray that the Court of Session would reinstate them in their holy functions; for that would have implied, what they all along denied, that they had been deprived of these functions. Civil protection, in the exercise of their ecclesiastical duties and functions, was all they ever asked. On all these grounds, he must hold, that there was no room for serving them with the libel on the table, which he would therefore dismiss as irrelevant.

Mr Dunlop, advocate, sought merely to reply to two points in

26.

Dr Robertson's speech. The libel had not gone
Mr Dunlop. back to the suspension of the gentlemen at the bar,

or the grounds on which that suspension rested, because these matters were regarded as *res judicatæ* by a former Assembly, and the offences charged arose at a subsequent period. And in regard to the argument, that the brethren might in their consciences have appealed to God, and not to Cæsar, he maintained that it was shut out by what they themselves had put upon the record;—where they had, in fact, admitted that they had violated their sentence of suspension, because they had the authority of the civil courts to do so.

Mr Dunlop added, on this occasion, another to the many misre-

27.

Remarks.

presentations under which the Church and country
were called upon to regard the conduct of the
Strathbogie ministers. They had not either in fact, or by fair and legitimate inference, admitted that they had violated the sentence of suspension, because they had the authority of the civil courts to do so. They had continued in the exercise of their pastoral and other functions, because they had never been either civilly or ecclesiastically suspended from the same. They had complained to the

civil magistrate, as they were entitled to do under the Confession of Faith, that, in regard to them, one of those "abuses" in the government and discipline of the Church had occurred which it was his duty to "take order" should be remedied or removed. The civil court, as bound in duty, had called upon the parties complained against to answer the charge—suspending, in the mean time, execution of the sentence, represented as an "abuse" demanding their notice. These parties refused to appear or plead to the action, and the interlocutor necessarily became perpetual. Had the Court of Session refused the interdict and suspension craved, either on the ground that they had no jurisdiction, or that there was no *prima facie* case of "abuse" made out, the presumption is that the presbytery would have regarded the suspension, as civilly and ecclesiastically competent. At an after stage the Church did, indeed, join issue with the suspended and then deposed ministers; and in a conjoined action of reduction, the Court of Session found the sentences pronounced against the Strathbogie ministers, to have been illegal and incompetent, both as regarded civil and ecclesiastical effects. It was, therefore, as maintained by Dr Robertson, not a little suspicious, that the act for which the Strathbogie ministers had been suspended, formed no count or *dittay* in the libel now brought forward. To have brought out the whole case fully and fairly, the very first count ought to have set forth, that obedience to the civil court, when prohibited by the ecclesiastical, was a spiritual offence, punishable by the laws of the Church; and that of this crime the parties before the Assembly had been guilty.

The General Assembly then divided on the motions of Dr Chalmers and Dr Cook, when the former was carried by a majority of ninety-seven—the numbers being two hundred and twenty-two to one hundred and twenty-five.

Upon the Assembly coming to this vote on the relevancy of the libel, and the amount of the proof by which it was established, the reverend Mr Allardyce of Rhynie, one of the ministers at the bar, was permitted to read and give in a paper signed by himself and the rest of the suspended brethren, in which they vindicated themselves from the charges brought against them, by a short statement of the facts and circumstances of

28.
Paper given in by
the ministers.

the case ; trusting, as they said, that this statement would lead the Assembly to recede from the position which had been taken up against them ; but willing, at all events, that their countrymen and posterity should be enabled to judge of the measure of justice which had been meted out to them. This paper, which they further requested might be entered on the record, went into a detailed account of the whole proceedings of the presbytery of Strathbogie in the settlement of Mr Edwards, and set forth the views of their duty entertained by them at each and every step which they were called upon to take through the intervention of the civil power, applied to by the presentee for the protection of his interests. When at length called upon, as they had been, to plead to the relevancy of the charges which had now been disposed of, they felt constrained to hold the libel against them as resolvable into the astounding assumption, that a General Assembly of the Church of Scotland may supersede statutes of the realm by mere ecclesiastical ordinances, and may enforce submission to these ordinances under pain of deprivation of office. This power they had ventured to dispute, and never could concede ; and when punishment overtook them for yielding obedience to the decrees of the civil courts, they had done no more than seek protection from the civil magistrate against these penalties. They protested, that they were ready to yield obedience in all things lawful ; but they could not, and would not, violate the rights of others, and the law of the land, at the bidding of the majority of the Assembly, who had arbitrarily demanded it. In refusing this obedience, they held themselves to be the best and truest friends of the Church, as established by law, and as founded on Protestant principles. They were there to justify the acts set forth in the libel, not to deny them ; and to state, that, if other presbyteries, similarly situated as they were, should pursue any other course than they had done, they would but hasten the downfall of the Church of Scotland.

After reading the paper, and laying it on the table of the General
 29. Assembly, the ministers of Strathbogie left the house.
 Sentence of deposition proposed. Several members of the Assembly, who declared that they would not witness the outrage, which was about to be committed, on all that was legal, and orderly, and becoming a congrega-

gation of Christian ministers and elders, by the deposition of these gentlemen, also accompanied them; when Dr Chalmers, who had been absent from the time that he had made the motion sustaining the relevancy of the libel, but who had just returned, as the ministers at the bar were leaving the house, moved that they should be forthwith deposed from the office of the holy ministry, which motion was seconded by the Rev. Dr Brown of Langton.

The Rev. Mr Clark of Inverness moved, as an amendment, that
 30. Motion made by Mr Clark. the ministers should be suspended *sine die* from all their functions. The Rev. Dr Macfarlane of Greenock regretted that this amendment should have been brought forward. It had been demonstrated, he said, that the parties at the bar had acted in contravention of the Confession of Faith, that they had been guilty of a breach of their ordination vows, and that they had sinned against the Lord Jesus Christ; and he could not consent to a less measure of punishment than that which Dr Chalmers had proposed. He asked if the Church was ready to abjure the Confession of Faith, to cast away her Declaration of Spiritual Independence, and to stultify all the proceedings she had taken in this most painful business. There was no hope, he said, of these parties making that confession of their offence, which Mr Clark's motion supposed and hoped for; and their parishes must in the mean time be looked after. If the Church did not vindicate her authority in the deposition of these gentlemen, he certainly thought that she would cease, and cease deservedly, to be respected as a Church of Christ, not only in Scotland, but throughout the Christian world. The result might be, he admitted, the breaking up of the Church of Scotland, but they were not to purchase her safety or existence by the sacrifice of her great fundamental principles.

Dr Candlish thought the measure proposed by Dr Chalmers
 31. Dr Candlish. indispensably necessary. He had no sympathy as to the probable result of such a sentence. He could allow no considerations of expediency to influence him in coming to a judgment; although he did look forward with the greatest anxiety to the effects of passing the sentence. And least of all did he sympathise with the reference made to what the sentiments of

the people might be on such an occasion. He thought the sentence proposed by Mr Clark, of suspension *sine die*, the very reverse of lenient. The obvious sentence, that might have been pronounced against these ministers, was declaring their connexion with the Church to be at an end; but to this serious extent it was not proposed to proceed. It had been alleged, he said, that the sentence of suspension would not be an irrevocable step, and the unhappy brethren might be restored, when in a proper state of mind. He believed that, if it was wished to see their restoration to the Church, it must be by taking the method which God would bless; and that method was by carrying out the discipline which God had ordained. He was bound to treat the case substantially as a case of heresy—as a virtual denial that the Lord Jesus Christ is King and Head of his own Church; and he (Dr Candlish) did not feel himself at liberty to do anything short of what was proposed by Dr Chalmers, for vindicating the honour of the Great Head of the Church.

The speech of Dr Candlish on this occasion, though brief, was
 32. as important, as it was unambiguous in the prin-
 Remarks. ciples which it laid down; and, coming from one, who had by this time been greeted as the acknowledged leader of the Non-intrusion forces, it deserved no common share of attention. Properly to appreciate the position to which the Church of Scotland, under such counsels, was now rapidly approaching, it is to be kept in mind, that the ministers of Strathbogie—as acknowledged on all hands—had obeyed the law of the land. That law had been laid down to them by its highest constituted interpreters, who were armed, moreover, with power to vindicate its majesty in the punishment of its violators. Before these interpreters, the censured brethren had been forcibly dragged, because, in the first instance, they had respected the mandate of their ecclesiastical superiors, in the rejection of the presentee to Marnoch—believing that this mandate could ask nothing from them, as due to the great Head of the Church, which was not consistent with their sworn allegiance to their earthly sovereign. To the civil magistrate had the Church herself voluntarily carried the doubtful and disputed question, as it arose in the Auchterarder case; and, in doing so, had clearly recognised that

magistrate's jurisdiction to pronounce an ultimate and binding decision. But, said Dr Candlish, the ministers of Strathbogie are heretics, in denying, as they have done, that the Lord Jesus Christ is Head of his own Church—that denial being found in the fact of their regulating their ecclesiastical procedure according to the award of the very arbiters to whom the General Assembly itself had referred the debateable question! This being admitted for the sake of argument, it was left for Dr Candlish to show, how demanding a judgment, by which to be guided, could be less a heresy than obeying the judgment when obtained. But, passing by this manifest dilemma, it came to be asked, if those who openly adopted the heretical doctrines of the Strathbogie ministers, and, like the Rev. Mr Bissett of Bourtie, recorded an almost judicial admission of their faith in them, were to be overlooked? The whole minority, who recorded their votes against the sentence of deposition now proposed, were necessarily, under this reasoning, also heretics: they also denied that Christ is the great Head of the Church; for they avowed openly, and in words, that, like the Strathbogie ministers, they would regulate their ecclesiastical procedure, in the settlement of a vacant parish, according to the rule of the civil arbitrator.

The motion of Dr Chalmers was then put and carried, without a
 33. vote; when Dr Cook gave in reasons of dissent in
 Motion of Dr Chal- his own name, and in the name of all who should
 mers carried. Dis- adhere to him—which, on a motion by Mr Dun-
 sent by Dr Cook. lop, were ordered to be taken into consideration at the
 next sederunt. When the Moderator called upon *a member* to
 offer up prayer, previous to the sentence of deposition being
 pronounced, several ministers and elders rose and left the
 house: after which the sentence was solemnly pronounced from
 the chair;—by which sentence the seven ministers were, “in the
 name of the Lord Jesus Christ, the alone King and Head of the
 Church,” degraded from the office of the holy ministry, and pro-
 hibited and discharged from exercising the same, or any part
 thereof, under pain of the highest censures of the Church.
 Intimation was appointed to be made of this sentence from the
 pulpits of all the parishes in Strathbogie; the churches of the

deposed brethren were declared vacant ; and the Moderator was requested to communicate the same to the patrons, that these churches might, in due time, be supplied with pastors.

The debate on the relevancy of the libel, with which the Strathbogie clergymen had been served, and on which they had now received sentence of deposition from the holy office of the ministry, brought out, in the fullest and most unambiguous manner, the principles on which the ruling party in the Church had taken their stand, and left not a doubt that these principles were identical with all that had marked the claims of the Papal Church in her most proud and palmy days. The phraseology employed in the General Assembly of 1841, was not, indeed, exactly the same as had been listened to in the Council of Trent ; but Dr Chalmers and Dr Candlish claimed, for the spiritual office-bearers in the presbyterian “house of Christ,” a power as independent, unlimited, and arbitrary, over alike prince and people, as had the Legate Lainez himself for his Holiness the Pope ; and every member of the Kirk was as much reduced to the condition of a “slave,” under these office-bearers, as had the Church of Christendom, and her general councils, been laid by the Legate at the feet of the triple crown. These claims, stoutly resisted by the Moderates, were met by arguments which proclaimed to all the world that the Church of Scotland was already rent in twain ; and the palpable injustice of dealing with the seven ministers at the bar, instead of the one hundred and twenty-five members of the Assembly, concurring this time in the motion and dissent of Dr Cook, became apparent to every one. To punish the ministers of Strathbogie, as rebelling against the great Head of the Church, and to pass unnoticed those who declared that they would disregard and disobey the Church’s edicts—and, like the gentlemen at the bar, would seek for protection from the Court of Session against her unjust decrees—betrayed a weakness or a want of integrity, that could not fail to insure the contempt of the country. Nor can it be doubted, that the inconsistency of their position was seen and felt, upon this occasion, by the leaders of the majority in this vote. That it was not apprehended in all its consequences, as it ought to have been, by others, became evident at

34.
Principles of the
dominant party
brought out.

an after stage, when not a few, who concurred in and applauded the sentence then passed upon the Strathbogie ministers, afterwards felt themselves at liberty to entertain a motion, or to carry it out practically, that this condemnation, although solemnly pronounced in the name of the Lord Jesus Christ, should be treated as *ab initio* null and void — and consequently destitute of that authority to which, as the act and deed of the constituted and infallible office-bearers in His house, it would have been entitled : thus, in fact, so far as the question had been raised—Who are the office-bearers, in the house of Christ, competent to pronounce judgment in the case under consideration ? determining this question in favour of the Court of Session, not the General Assembly.

Upon the sentence of deposition being carried, Dr Cook gave
35.
Protest of Dr Cook
—how treated. in, as has been stated, Reasons of Dissent. These reasons came to be read and disposed of at the following sederunt of the Assembly, as had been agreed upon ; when Mr Dunlop, who had all along stood forward as the counsel of the Church, stated it as his opinion that the protest, which had been proposed by Dr Cook, and those who adhered to him, was uncalled for and unnecessary, and that it ought not to be received by the house. This protest embodied the conviction of the subscribers, that the ministers under alleged deposition had acted in conformity with the obligations, binding upon every member of the Church, to be subject to the civil power in all matters adjudged by the supreme civil authority of the country to affect temporal rights ; and intimated farther, that they, the protesters, could not, without violating the duty which they owed to the Church, cease to regard the ministers under alleged deposition, as still ministers of the Established Church. Mr Dunlop said he was glad to find, that the subscribers of this protest had not committed themselves to any line of conduct. They had, indeed, according to him, stated their opinions in a manner that was disrespectful to the house ; but he hoped they would consider well, before they embodied them in any course of conduct. He recognised a pledge, that this would be the case, in the declaration made by them, that they would continue to discharge their duties as ministers of the Church —duties, which they could not discharge, if they followed out into

action the course which the document on the table appeared to indicate. He would not call upon the Assembly to deal with the protesters, so as to increase the agitation already prevailing ;—the more especially as, after the firmness which the house had displayed in dealing with the Strathbogie ministers, it would not be supposed by any, that they shrank from, or were afraid to do their duty. In this assurance, which he called upon the Assembly to embody in its deliverance, he moved that the General Assembly felt itself warranted in refraining from doing more, than refusing the declaration or dissent of Dr Cook and his brethren.

Dr Cook said, that he and his friends could not do less than they had done—intimate to the Assembly their opinion, and also what, acting upon that opinion, they would do. He had done that which he deemed at present to be his duty ; and it would be a matter of deep lamentation to him, if anything should occur, which should lead to those sad evils coming upon the Church, the prospect of which filled him with dismay.

The Protest now given in was well calculated to arrest the attention, and to arouse the indignation, of the ruling party in the Assembly, as it evidently placed them in a false position towards the ministers of Strathbogie, so long as they refrained from visiting the protesters with the censures of the Church. These ministers had been suspended, in the first instance, for merely recording a resolution, and before they had “ committed themselves to any line of conduct ;” and to every one it was manifest, that the conduct and declaration of Dr Cook and his friends were far more disrespectful towards the house, and portended, in the end, far greater disregard to its edicts, than anything of which the suspended brethren had been guilty, before the censures of the Church overtook them. It would, no doubt, have been so far agreeable to the ruling majority, if at this time the matter had been allowed to rest where Mr Dunlop represented Dr Cook as having left it ; and the justice and consistency of the Assembly might, to some, have appeared to find shelter under the assumed assurance, that the opinions declared would never ripen into action, as such ripening would be incompatible with the avowal of the protesters, that they would continue to discharge their duties as

36.
Dr Cook.
37.
Import of the protest.

ministers of the Church. But another reverend member—Dr Bryce—who had, during all this controversy, withstood the dominant faction in every step they had taken—claimed his right, as one who had joined in the Protest and dissent, to explain the meaning, in which he received and understood the declaration contained in it, that the protesters “would not cease to regard the Strathbogie brethren as still ministers of the Established Church.” Others, he said, would, of course, act as they felt in duty bound to do; but he must distinctly and unequivocally inform the Assembly, after what had then been said, that he did intend to embody the opinion he had expressed in his dissent, by holding communion with these brethren, and assisting them, as opportunity might offer, in the dispensation of word and sacraments, within their parishes, as if no sentence of deposition had ever passed against them. It will not be disputed that such a declaration as this—made, in a manner, judicially, and capable of being taken down and verified at the moment—ought to have subjected the party making it, being a minister, to suspension from all ministerial functions, had the Assembly been prepared to act on the same rule and principle which they had applied to the Strathbogie clergymen. But the ruling party were well aware that such a step would, in all probability, have been followed by a similar declaration from perhaps one and all of the protesters, of whom Dr Bryce was, in truth, but the mouth-piece; and such a contingency it was clearly the policy of the majority to avoid: while it may be presumed, that it was not less the object of the minority to force it upon them; and by this means to bring to issue the question which, every one now saw, must, some time or another, be decided—namely, which of the parties, now dividing the Assembly, constituted the Church of Scotland, as known to the law of the land? Upon Sir James Elphinstone, an elder of the house, expressing the same determination as had Dr Bryce, there did, indeed, appear some prospect of a renewed agitation; but Dr Cunningham very prudently interfered, and suggested that, in point of order, the speech of the gallant member could not then be answered; and, after some further discussion, it was agreed, that the deliverance of the Assembly should be, that, “a certain paper being tendered to the house, the house refused to receive it.”

During all these extraordinary proceedings, when the General
 38. Assembly, by the deposition of the Strathbogie
 Position of the Lord Commissioner, ministers, because they had paid respect to the decrees of the civil magistrate, were offering the most manifest insult to the law of the land, and to the highest of its civil judicatories, the Lord High Commissioner—the representative of the royal person—took no part or concern in what was going forward. His right to interfere, and, by a dissolution, to have prevented this outrage being committed, cannot be doubted; and an expectation did prevail, in several quarters, that such would have been the course pursued. When, however, as usual, at the close of the Assembly, the Commissioner expressed his satisfaction at the proceedings which had taken place, and the pleasure he would have in reporting the same to her Majesty, it is not to be wondered at, that the dominant faction in the Church were encouraged more and more, to persevere in the rebellious attitude which they had assumed. That the Crown had “authority and prerogative” to be respected and maintained within the Assembly, the Commissioner himself admitted, when, a few days afterwards—upon these being regarded by the house as about to be invaded, by an officer of the law seeking to serve a legal instrument upon the Moderator and clerks—his Grace intimated, that he would be found ready at all times to preserve them. It was thought, by not a few, that the presence and countenance of the Head of the State must be withdrawn from a body trampling, like the Assembly, alike upon its laws and its constituted tribunals. But the forbearance shown on this occasion was, perhaps, in part traceable to the then position of her Majesty’s government, which was too weak to permit them hazarding their popularity by any decided step.

Immediately after the passing of the sentence of deposition upon
 39. the Strathbogie clergymen, several ministers, mem-
 Proceedings consequent on the Deposition. bers of the Assembly, were despatched to take possession of the pulpits of the deposed brethren, and to intimate to their congregations the censure that had been passed against their old and respected pastors. None of these ministers, however, were able to obtain admittance to any of the churches, guarded as they were against their intrusion by the most honour-

able of all inhibitions—the ardent love and affection of the people to their long-tried and honoured religious instructors. In the mean time, the Strathbogie ministers applied to the Court of Session for interdict and suspension of the sentence, that had been pronounced against them by the General Assembly, on the ground of its constituting one of those “abuses in the government and discipline of the Church, which the civil magistrate was to ‘take order,’ should be remedied or removed.” This interdict was granted by the Lord Ordinary on the Bills, two days after the deliverance complained of had been given; and, while the Assembly was engaged in debating an overture on the eldership, a letter was put into the hands of the Moderator, from the agent of the ministers under alleged deposition, informing him, that a messenger-at-arms was at the door, to serve upon him, and the Procurator and clerks, an inhibition against giving effect to the sentence of deposition, that had been pronounced, and that he had been denied admittance to the house. No order of the house had, indeed, issued to this effect to the door-keepers of the Assembly, but an active and leading member, it was well known, had taken it upon himself to give the instructions, on which the door-keepers were acting, and which had rendered necessary the informal mode of application resorted to by the agent of the seven ministers.

Before taking up the matter, it was moved, that a deputation of
 40. the Assembly should wait upon his Grace the Com-
 Deputation to the Commissioner, who had left the house, and in the name
 Commissioner. of the Assembly request his attendance; and that the clerk should be directed to reply to Mr Peterkin, the agent of the Strathbogie ministers, that his letter had been received, and was under consideration. Some time having elapsed, a second letter to the Moderator was received from the zealous and ever-vigilant agent of the ministers, stating, that he did not choose to stand at the door as a suitor, where the law had given an undoubted right of entrance to its officers; and that he had, therefore, ordered copies of the interdict to be served by the messengers on the door-keepers, to be by them delivered to the house. His Grace the Commissioner having in the mean time arrived, the Moderator informed him of the circumstances that had occurred, when he was pleased to reply, that he was at all times ready to

attend the Assembly, and would be prepared to do his duty, whether that duty called upon him to support the rights of the Assembly, or to maintain the authority and prerogative of the Crown—if they should be attempted to be infringed in any quarter;—an announcement clearly pledging the Commissioner to maintain the authority of the Queen's judges, in seeing that due respect was paid to their edicts, and to the officers serving them. On a question, from a member of the house, whether the interdict referred to had been yet received, Mr Dunlop expressed a hope, that no officer of the Assembly would dare to receive anything of the kind, and suggested that the officer should be called in to answer the question. Dr Brunton thought that the house was getting into a situation by no means to be envied. They had refused admittance to the messenger-at-arms to tender the interdicts, and they had allowed a considerable time to elapse, since they received intimation, that the documents were in the hands of the door-keepers, without answering the letter conveying this notice. Dr Bryce thought that, in these circumstances, and where the fact of the documents being in the hands of the officers of the Assembly was admitted, a case had distinctly arisen, in which the opinion of the Procurator of the Church ought to be asked; and where that officer ought to inform the house, whether the documents, having been left under the circumstances stated, was a valid and legal service on the house. It was at length moved and seconded, that the documents left with the officers at the door should be brought in;—a motion which was immediately met by an amendment, also duly seconded, that the Assembly should resume the debate on the eldership. The first of these motions called upon the Assembly to pay proper respect to the civil court, as it had seen fit to exercise its jurisdiction in this matter: The second manifested no such feelings on the part of the house. After a renewal of the disorderly scene that had occurred, it was agreed unanimously, that, before disposing of either of the motions before the house, the Procurator should be asked whether the Assembly ought to order the papers left at the door to be brought in, or whether they should proceed with the business before the Assembly? In reply, the Procurator stated that the question, as then put, was not confined, as had been that proposed by a reverend

member, to a point of law, but sought from him an opinion on a matter of expediency and discretion. If asked, without reference to the legality of the service, whether the papers should be ordered in, he left that entirely to the house. He was not a member, and could not speak in his place to the point. He did not think, he said, that the house had placed itself in a position of resisting the officers of the law. It was the duty of the pursuer, to serve his interdict as he pleased; it was, he apprehended, the province of the civil court to say, if it had been duly served, whenever that question arose; and the defender, he thought, was not called upon to say a word upon the subject. At length, after a prolonged and very singular scene, it was agreed, on a motion by Dr Cunningham, seconded by Dr Cook, that the papers left at the door should be brought in. This was followed up by the doorkeeper being called in, and interrogated at the table, if the papers were the same that had been left with him by the messenger-at-arms, to which he replied in the affirmative, when the Assembly forthwith adjourned.

It is difficult to understand what object was intended to be served by those who, on this remarkable occasion, so stoutly resisted the ordinary process of the law. If, as some seemed at the time disposed to argue, the service of the interdict in the presence of her Majesty's representative was an insult offered to royalty, it was still more remarkable, that his Grace the Commissioner should have been specially requested to be in his place, when it was proposed to perpetrate the deed. No hope could be entertained, that the Commissioner, even if he had been officially acquainted with the nature of the documents, would have interfered in any manner to prevent their service, or to punish those attempting to serve them, as guilty of contempt. The messenger-at-arms was the officer of the Crown, and resistance to him, in the execution of his duty, was resistance to her Majesty. If it was her Majesty, who sat upon the throne within the house, in the person of the High Commissioner, it was her Majesty, in the person of the messenger-at-arms, who was knocking at its door. And it so happened, that at the very next meeting of the Assembly, after this extraordinary scene had been exhibited, the officer intrusted with serving a similar instrument on the house, in the case of a presentee, who had been deprived

41.
Remarks.

of his license to preach, served the inhibition upon the Moderator and clerks at the table, during the sitting of the house, and in the presence of the Lord High Commissioner. As the Assembly neither ordered the interdict in the Strathbogie case to be acknowledged, nor to be thrown over the table, it was evident to every one that, by treating it at the beginning with the regard paid to it in the end, the whole of the scene that had taken place, so little to the credit of the supreme judicatory of the Church, might have been avoided; and the heavier blame must be attached to those, who brought the house into so strange and unbecoming a predicament, that the Agent for the seven ministers, in order to avoid what by some might be thought the unseemly appearance of an officer of the law in the midst of the Assembly, had offered to serve the interdict on the Moderator and clerks, if they would meet him for that purpose in the robing-room;—an offer, which it was not deemed proper to accept.

These proceedings were followed up, at the next and concluding ^{42.} sederunt of the Assembly, with a series of resolutions, Resolutions passed by the Assembly. setting forth, in detail, the circumstances that had occurred; and declaring, that “any attempt on the part of any civil court, or any civil judge in the realm, to interfere with the procedure of the General Assembly, is a flagrant violation of the rights of the National Church, as ratified by the constitution and laws of the United Kingdom, which expressly secure to the Church of Scotland, and to the supreme judicatory thereof, exclusive jurisdiction in all spiritual matters, and especially in the deposition of ministers, and in whatever affects the discipline and government of the Church.” Nothing could more strongly demonstrate the recklessness with which the majority in the General Assembly were now proceeding, than the placing upon record, and agreeing to transmit to the Queen in Council, resolutions so obviously in the face of the statutes of the realm. It is also not a little remarkable, that when these resolutions were introduced by Dr Candlish, he very candidly told the Assembly, that he did not mean to discuss their merits, as he knew that the majority of the house had made up their mind on this subject; and it would only be a waste of time to enter on a detail. But perhaps the most singular

part of this procedure was, that the Assembly was called upon to address the Crown on an attempt to lay certain papers on their table, as an infringement of the Church's liberties, while they were in utter ignorance of what these papers contained! In the resolutions, they are spoken of as "*said to be* copies of an interdict, *alleged to have been* granted by the Court of Session;" but whether they were so in reality or not, the Assembly could not know. They had never been read; and a motion made by Dr Cook—as an amendment to the adopting of these resolutions, that the papers should be read—was lost on a division of one hundred and eighty-nine to ninety.

It does not appear whether these extraordinary resolutions were
 43. ever transmitted to the Queen, as ordered by the
 Resolutions dis- Assembly; nor is there anything to show, how they
 posed of. were received by Her Majesty.

The attention of the Assembly, which had now closed its labours,
 44. had been drawn to subjects unconnected with the
 University Tests. great questions involved in the Strathbogie and
 Auchterarder cases, but not the less entitled to notice. By this
 time it had been resolved, in quarters hostile to the Church of Scot-
 land, and determined to strip her of the rights and immunities
 conferred on her by law, to assail the jurisdiction, which she claims
 over the Universities of the country, in the matter of requiring the
 subscription of all professors or teachers appointed to them, to her
 Confession of Faith and Formula. The appointment of a Mr
 Blackie to the professorship of Humanity in Marischal College,
 Aberdeen, furnished an arena on which, at least, the attitudes to be
 assumed by the combatants, in the coming conflict, might be dis-
 played. Mr Blackie, on his being called to sign the Confession of
 Faith before the Presbytery of Aberdeen, qualified his compliance
 with a statement, that it was not as a confession of his private faith,
 that he adhibited his signature to this document, but only in his
 professional capacity; while, at the same time, he avowed his
 attachment to the form of presbyterian government established in
 the Church of Scotland, and his intention to worship in that Church.
 The presbytery did not regard this qualification of any great import-
 ance; made, as it appears to have been, incidentally by the Profes-

sor-elect ; but received the subscription as given, transmitting it in common form to the Senatus Academicus. This procedure on the part of the presbytery promised to intercept the notoriety, of which this gentleman appeared so desirous ; and he lost no time in making known, through the newspapers, the grounds on which his subscription to the Confession of Faith rested. In this manner he succeeded so far, that the Presbytery of Aberdeen now felt it to be their duty, to draw the attention of the Senatus Academicus of Marischal College to the letter, which the new professor had published ; and that learned body demurred proceeding to his instalment, until he had come to an understanding with the presbytery. This they did under advice of counsel, when Mr Blackie raised an action of damages against them. The application of the Presbytery of Aberdeen to be sisted as parties in this action, was refused by the Lord Ordinary ;—his lordship holding, that all the duty given to the presbytery was to act *ministerially*, and receive the subscription. Had his lordship's Note, on this occasion, stopped at this point, the Church would, perhaps, have found that she had but little interest in the question ; but she became justly alarmed for the rights which she claims in the induction of professors, when the Ordinary went on to deliver his opinion, that should a Senatus admit a professor, without his previously adhibiting his signature to the Confession of Faith, the presbytery of the bounds has no right to interfere ; and, in these circumstances, the Assembly regarded the reference made by the Presbytery of Aberdeen, as embracing questions of very high importance. The Assembly did not, however, think that these questions could be tried to the best advantage, under the *reclaiming note*, which the presbytery of Aberdeen had presented to the Inner House, on being refused to appear as parties in this action ; and they advised the presbytery to withdraw the note ; taking care, in doing so, to prevent the possibility that this step should be regarded as an acquiescence, on their part, in the doctrines laid down by the Lord Ordinary. Since these transactions, which terminated in Mr Blackie's installation in his office, the question has arisen in other cases, not encumbered by the same specialities, and has been decided in favour of the claims of the Church of Scotland. This has shifted the scene of strife from the

courts of law to the legislature; and at this time (1849) preparations the most active on both sides are discernible.

Several overtures on the Standards of the Church, and their
^{45.}
 Overtures anent the Standards. infringement by parties on whom they are binding, had been passed through the committees after the usual forms; the object of which, coming from the quarter whence they emanated, could not be mistaken. These overtures related to the Confession of Faith, and the jurisdiction of the Civil Magistrate in things spiritual, as there laid down; and their introduction by Dr Cunningham was just a move in another shape, to elicit the mind of the Church on the extent and limits of civil and ecclesiastical authority. These overtures arose out of a pamphlet, published by the Rev. Dr P. Forbes, of Old Machar, in the course of the controversy now agitating the Church; and as their disposal might terminate in proceedings against the author, in consequence of the opinions set forth in this pamphlet, they acquired a still greater interest. The request of Dr Cunningham to be heard upon their nature and purpose, notwithstanding his notice of their being to be ultimately withdrawn, was opposed on the ground that, as they were stated to affect the character and status of a minister, who was neither present nor apprised of the proceeding, the indulgence ought not to be granted. This objection, as might have been foreseen, was overruled; and Dr Cunningham informed the Assembly, that he intended to have sought, by these overtures, a deliverance from the Assembly, that the opinions of Dr Forbes, on the subject of the powers of the civil magistrate, in things spiritual, were erroneous, and opposed to the Confession of Faith;—leaving it, of course, to the Presbytery of Aberdeen to deal with the reverend author. He was aware, however, that the opening of this thesis, in the manner to which alike the question itself, the Assembly, and Dr Forbes were entitled, would occupy more time than could be spared; and he contented himself with merely intimating the mode in which he would have called upon the Assembly to dispose of these overtures; and this he did, because it had been maintained in various quarters, and was becoming, in fact, the staple of the argument, employed against the majority of the Church, that the Civil Magistrate has authority in spiritual matters. He foresaw, he said, that this argument would be brought

against the Church for some time ; and it may be fairly inferred, that Dr Cunningham took the steps, which he now did, in order to intimidate those who might hazard it ; as he followed up the explanations which he gave, by warning his “ friends opposite, to take care how they commit themselves to that construction of our standard ;” telling them very kindly, that if “ they did so, and this house should be brought to interfere, they might be placed in a very awkward situation.” No doubt the reverend doctor charitably imputed these errors to “ ignorance of our standards ;” but nothing could surpass the arrogance of his reservation to himself, of bringing the pamphlet of Dr Forbes before the Commission, provided he found the views embodied in it acquiring prevalence, either through the legislature, the bench, or the press. He was right, however, in representing the dogma, that the Civil Magistrate has jurisdiction in ecclesiastical matters, as lying at the very root of the controversies now dividing the Church ; and as, indeed, the staple argument of the minority in the Assembly. This doctrine had been, from the very outset, maintained by the Moderate side of the Church ; and was every day becoming more and more openly proclaimed as their creed. Its practical consequences were now developing themselves ; and, amongst others, it could not fail to be seen, by so acute an observer as Dr Cunningham, that, if it was not abandoned, the majority, who stood on the very opposite principle, as at once scriptural, constitutional, and accordant with the Confession of Faith, had no alternative but to deal with the whole Moderate section of the Assembly, as they had just dealt with the Strathbogie ministers. The line of demarcation was becoming, at every step, more and more broadly and distinctly marked. Those now in the minority had all along held, and were now practically carrying out the doctrine, that it is the province and the duty of the civil magistrate, being *pius et Christianus*, to afford to the Church—the Christian people—whether ministers or members—redress and relief against the unjust and oppressive acts of the ecclesiastical courts ; the majority, on the other hand, inculcating that against these acts, the Church—the Christian people—has no *refugium* in the civil courts ;—the ecclesiastical or spiritual tribunals—“ the office-bearers in the house of Christ”—being sole judges in

all things touching the honour and rights of His crown and kingdom. Although, at this particular stage of the conflict, Dr Cunningham deemed it most expedient, to waive throwing the light, which the entertaining of his overtures would have done on these relative positions, and the important consequences which they so clearly involved, they were ultimately illuminated, as with a sunbeam, when the Secession in 1843 took place; and no mistake need now be fallen into, in striving to understand the great characteristics that distinguish the Established and the Free Churches. Whether the former or the latter are the better entitled to the name of Free, would also seem a question admitting of little doubt.

46.
 Duke of Argyle's
 bill withdrawn. Soon after the rising of the Assembly 1841, and notwithstanding that the resolutions of Dr Mackellar to approve of the Duke of Argyle's bill were carried against the motion of Professor Hill, on a division of two hundred and thirty to one hundred and five, and a committee was appointed to watch over its progress, his Grace withdrew the measure, which had been, from the beginning, brought forward under circumstances that held not out the remotest chance of its passing the legislature, and which, as has been noticed, procured for it a support within the Church herself far from encouraging. It is due, however, to this noble family to record, that while the father was thus exerting himself in the House of Lords to accomplish a settlement of the Church affairs, the son, the young and talented Marquis of Lorn, was standing forth one of the ablest and most acute defenders, through the press, of the spiritual rights and ecclesiastical jurisdiction, for which the Church of Scotland was then contending. But while these noble and influential persons vindicated the then dominant party in the Church, in the doctrines and principles which they were at this time upholding, it is worthy of remark, that neither the late nor the present Duke of Argyle followed their example when, on finding that the legislature would not sanction the principles ultimately contended for, this party seceded from the Establishment.*

* It has been stated in this chapter—and the error overlooked until too late—that the bill of the Duke of Argyle was subsequent to the measure introduced into the House of Commons by Mr Campbell of Monzie. The bill of the late member for Argyleshire, for settling the Scottish Church question, will afterwards be noticed in its proper place.

CHAPTER VI

NEGOTIATIONS BETWEEN SIR GEORGE SINCLAIR, THE NON-INTRUSION COMMITTEE, AND HER MAJESTY'S GOVERNMENT.

A FEW weeks after the rising of the General Assembly 1841, Sir George Sinclair, Bart., who had always taken a warm interest and active part in all that regarded the welfare of the Church of Scotland, communicated to his parish minister—the Reverend Dr Candlish—a wish that he would meet the Dean of Faculty, with a view of bringing parties together on the existing difficulties of that Church. This meeting took place, when, according to Dr Candlish's account, the way to an understanding, on the question of Non-intrusion, was so far cleared from all incumbrances, by its being agreed upon, that the question of a settlement of the Church's affairs should be considered, irrespectively of the legal proceedings then carrying on against the Church, and of the disposal of the Strathbogie ministers.

Looking back to the position of the Church at this time, it is difficult to see how any hopes of a happy termination to the difficulties that were gathering around her could be entertained, while these excepted points were placed in abeyance; and events, that soon afterwards occurred, were well calculated to throw a doubt around the sincerity of some of the parties now entering on negotiations. It was, perhaps, expected, that in obtaining from the legislature the legalisation of the principles of Non-intrusion, considered as alone involved in the first branch of the Auchterarder case, that of Spiritual independence, which had arisen under the Strathbogie, might also be secured;—the measure obtained being held as a declaratory law, and, conse-

quently, such a repudiation by the State of the judgments pronounced in the civil courts, as would enable the Church, without molestation, to put forth her discipline, in restoring her disobedient sons, as she should see fit, to their places. At this conference, the merits of a *liberum arbitrium* to the Church courts, which had before now been brought under notice, as a basis of settlement, were discussed; and Dr Candlish, while he by no means approved of a bill founded on this principle, was still willing, as had been Dr Chalmers, so far to entertain it, that, if obtained immediately, it might put an end to prevailing dissensions between the civil and ecclesiastical courts, and restore peace and unanimity within the Church herself. But he could not allow, as maintained by Mr Hope, that it was recognised in the measure of Lord Aberdeen, which the Assembly had rejected in 1840; and, he believed, rejected, among other reasons, that it did not really give this power to presbyteries, or permit them, in every case, to reject, if they chose, on the sole ground of the dissent of the people. That the Dean of Faculty regarded Lord Aberdeen's bill as giving a right to reject a presentee, on the sole ground of dissent by the people, without reference to reasons judicially cognosced, is a supposition altogether inadmissible; and however much he and Dr Candlish might, at this conference, have apparently approached each other in opinion, it was evident that the gulf between them would, in the end, be found to be impassable; nor is it to be supposed that this gulf could have been unseen by men so shrewd, and so much alive to all the contingencies that might arise. At this conference, an arrangement for giving effect to the Call was also discussed; and Mr Hope even declared himself as favourably inclined towards such a plan of adjustment, as should give the Church courts power to sustain or reject a Call at their discretion. The learned Dean further undertook to prepare drafts of two bills, one founded on the *liberum arbitrium* of the Church courts, as bearing upon the dissent of the people; the other, as it affected the Call, or positive assent. Circumstances, however, soon afterwards occurred, which satisfied Mr Hope that no good purpose could be served by his perseverance in any attempt to obtain a settlement of this question on any of the bases now proposed;—circumstances, of which had he duly

weighed the importance, would have prevented him from embarking any farther in the project of his friend Sir George Sinclair. The proceedings of the August Commission, in ordering several ministers, who had assisted the Strathbogie brethren since their suspension, to be brought to discipline in their several presbyteries, appeared to him to shut out every hope of success ; and all negotiations between the Dean and Dr Candlish ceased for a time. No other course, indeed, appeared open to Mr Hope ; as the assistance given to the Strathbogie brethren by the ministers now threatened with discipline had, it was understood, been sanctioned by the Dean of Faculty, as due to his clients, and as calculated to strengthen their hands in the arduous contest in which they were engaged. How he came so soon afterwards to change his opinion, and while these proceedings remained as they were, it is not, perhaps, easy to conjecture.

In the mean time, Sir George Sinclair was not so easily deterred by the more and more hostile attitude of the Church towards the civil court, and those of the clergy who were respecting its decrees, but went on with his proposed modification of Lord Aberdeen's bill. This modification consisted, substantially, in enacting, that a presbytery might reject a presentee, if they saw fit, " in respect, that the reasons or objections, though not, in the judgment of the presbytery, of themselves conclusive, were entertained by such a proportion of the parishioners as, in the opinion of the presbytery, to preclude the prospect of the presentee's usefulness in that particular parish." Reasons or objections were to be demanded from the dissentients, on which the presbytery was to determine judicially ; and hence the principle of Non-intrusion, as embodied in, and carried out by, the Veto Act, was set aside, and the right of rejection apparently transferred to the Church courts. But, after these reasons or objections should be disposed of judicially, to the extent of being set aside as irrelevant or unfounded, in the opinion of the presbytery, the proposed amendment allowed a deliverance of rejection, on the ground that the people still dissented ! It did not compel the rejection, as the Church herself had demanded, when she sought the legalisation of her Veto Act. This proposal of Sir George came entirely from himself, and was not made in communication with, or by the authority of, any

3.
Modified measure
of Sir George
Sinclair.

of her Majesty's government; and, on this account, the Committee of the General Assembly, to whom it was, by this time, communicated, felt themselves precluded from giving any reply to the suggestion; the more especially, it was added, that it fell so far short of what the Church might reasonably expect. It was, however, soon afterwards represented to the committee, that there was a prospect of this proposal being made to them from high authority; and upon this they instructed their agent in London so far to entertain it; directing him to be guided by the views taken by the Non-Intrusion Committee in 1839-40, whose attention had been directed, among other modes of adjustment, to one not very dissimilar. The committee itself, understanding the proposal as recognising the right of the Church courts, in their judicial capacity, to give effect to the objections of the people in every case in which they saw fit, notwithstanding they could not homologate the reasons sustaining these objections, suggested an alteration in the clause, as proposed by Sir George Sinclair, more clearly bringing out this power on the part of the Church courts, and leaving these courts at liberty, on their own responsibility, to give effect to their solemn convictions of duty. The clause, as thus proposed to be amended by the committee, and as ultimately agreed to by them, on the condition that immediate legislation should take place, provided that the presbytery should be entitled to reject a presentee, against whom reasons or objections might be tendered; "in respect that the said reasons and objections, though not in themselves conclusive in the judgment of the presbytery, are entertained by such a proportion of the parishioners, and entertained by them so strongly, as to render it, in the opinion of the presbytery, *taking into account the reasons and objections aforesaid*, and the degree to which they prevail, inconsistent with their duty, or with the spiritual interests of the parish, to proceed with the settlement of the presentee in that particular congregation." *

Sir George Sinclair, in bringing forward this amendment, proceeded on the assumption, that both parties in the
4. Sir George corresponds with Dr Cook. Church were bent upon "extreme" measures, and

* Proceedings of the General Assembly and Non-intrusion Committees, p. 11. 1841.

had adopted "extreme" principles, which must be mutually abandoned. He did not, however, seek to communicate with the Moderate and Constitutional Committee, the well-known organ of the Moderate party, as he had done with the Non-intrusion Committee; although he entered into correspondence with Dr Cook on the modification which he proposed, and informed him confidentially, of his being engaged in negotiations on the subject with the Non-intrusion Committee. In this correspondence Sir George Sinclair—aware that the case of the Strathbogie ministers would prove the greatest obstacle—felt constrained to provide for its removal; knowing well, that however willing the Committee might be to keep the question in abeyance, until that of Non-intrusion was previously disposed of, the Moderates would insist on its adjustment as a preliminary step; and he suggested, that these ministers should resign, and afterwards be reponed, in such a manner as both parties in the Church might approve of;—a proposal that certainly betrayed less of sagacity and penetration than of zeal and goodwill in the cause in which he was about to embark. It was obvious that those, who had suspended and deposed the seven ministers, would never be content with a resignation and simple restoration to their functions, while no acknowledgment of error was made, and no promise of future obedience to the Church was given. It was equally impossible, that those who demanded nothing more than a compliance with the law, as it had been declared, and the protection of those from ecclesiastical censures who had yielded this compliance, would admit as the basis of any negotiations, that they were advocating "extreme principles," or seeking "extreme measures." Such an admission would have been at once to relinquish all the grounds on which they vindicated the law, and upheld those who had obeyed it; and to them there was clearly but one course of conduct open—namely, to demand that the Veto law should be rescinded as *ab initio* null and void; and that, consequently, all procedure founded on it, or arising out of it, whether preventive or punitive, should be held as if it had never existed. On such a course of conduct the epithet "extreme" could not with any propriety be fixed; and nothing tended, in the end, more powerfully to uphold the character of the Established

Church of Scotland, than the firmness and consistency with which those, who soon afterwards came to constitute that Church, adhered to this line of conduct, and at length gave an honest and practical effect to their principles. In this correspondence Dr Cook very distinctly declared his determination to be a party to no adjustment, which did not provide for the restoration of the seven ministers; or which in any way assumed that they were to be abandoned. Sir George Sinclair—as perhaps became the “middle” position, which he had taken up—spoke of these ministers as having been “treated with harshness;” but he held throughout that they had been canonically suspended. Dr Cook evidently held the question, as to whether they were “harshly treated,” as very worthless, so long as he and his friends maintained that they never had been legally suspended, whether their sentence was measured by the civil or the ecclesiastical law. With regard to the merits of Sir George Sinclair’s amendment on Lord Aberdeen’s bill—should the adjustment of the Strathbogie case ever permit them to be reached, with a view to legislation—Dr Cook was very explicit. He objected to it, as giving absolute and irresponsible power to the Church courts; and he maintained, that the *liberum arbitrium* would open up a wider door to abuse and injustice towards presentees, than the Veto itself. It would not, moreover, be creditable to any other profession, that a candidate for admission into it should be cast, for reasons which even the judges admitted not to be in themselves conclusive against him. Under any arrangement, which did not bring forward prominently the grounds on which a presbytery’s decision rested, he would consider the Established Church as a most iniquitous spiritual despotism.*

Sir George Sinclair did not certainly meet with any encouragement from Dr Cook, to go into the negotiations which he proposed with the Non-intrusion Committee, nor any hopes that they would terminate otherwise than they did; and in other quarters to which he applied, connected with the Moderate party in the Church, he was equally unfortunate. This, however, did not induce the chivalrous baronet to desist from the

5.
Sir George not
discouraged.

* “Selection from Correspondence,” by Sir George Sinclair—p. 30.

attempt to heal the dissensions that had arisen in the Church. Too much blinded by his zeal and ardour to accomplish this object, he was unable to see, that on the basis on which he proposed to proceed, he might still more scatter, but certainly not re-unite, the *disjecta membra* of the Establishment.

The measure of Non-intrusion, modified by Sir George Sinclair, ^{6.} was understood, as enabling the Church to do judicially in any instance, where she pleased, what she desired to have possessed the power to have made imperative upon herself in all cases, by a legislative enactment of her own, sanctioned in a similar manner by parliament, so as to shut out all danger of interference by the civil courts. Unable to obtain an enactment, providing that the right of the Christian people to reject a presentee should be placed beyond the control, equally of the courts of law and judicatories of the Church, the proposal now offered for acceptance was held by the Committee as so far obviating the objections taken against the bill of 1840—that the judgment of the Church courts as to a presentee was to shut out that of the Court of Session. The Committee, at the same time, took care to guard against its being supposed that the Church sought such a mode of settlement. It was to be distinctly understood, that if she accepted it, it was because those plans, which she preferred, could not be attained; and in the hope of peace being restored, the Committee was willing to go so far into the proposal of Sir George Sinclair; stipulating, however, that any measure which might be prepared should be submitted to the counsel of the Church, Sir Frederick Pollock.

These proceedings, when they are candidly considered, present ^{7.} a singular commentary on the text of the Church's *spiritual independence*, as maintained, and by this time practically enforced, by the dominant majority of the Assembly. By the now proposed legislation, the Church was to be precluded from accommodating her procedure, according to her own views of the spiritual interests of the people, without the concurrence of the State; and it was clearly implied, by the whole terms and spirit of the arrangement, that the forfeiture of the temporalities on her part could not after this be held as so far

6.
Effects of the modified measure.

7.
Singular character of these proceedings.

entitling her to take a different view from the State of what the spiritualities of the benefice might demand : and on all these points, the civil courts, as the constitutional interpreters of acts of parliament, were to be the ultimate expounders. All the parties, concerned in this arrangement, appear to have regarded it as only re-declaring the law of the Church of Scotland as established since 1690 ; yet, by this time, probationers had been deprived of their license, and ministers deposed from their holy offices, because they had so understood and acted on the law and constitution !

It now remained for the worthy baronet, who had so chivalrously
 8.
 First step by the government. undertaken to heal the existing dissensions in the Kirk, to prevail upon her Majesty's government to make the first move towards the Church, in the newly proposed mode of adjustment ; and this, through the influence of the Dean of Faculty, soon afterwards the Lord Justice-Clerk of Scotland, he was enabled to do. The proposal was first submitted by Sir George Sinclair to the learned Dean, and by him to Lord Aberdeen, now one of her Majesty's ministers of State, and also to Sir Robert Peel, by this time at the head of the Cabinet, as a basis of settlement that might be adopted. Very considerable difficulty was experienced, in obtaining the consent of Lord Aberdeen to the modification of his bill of 1840, to which he very strongly objected, as calculated to render illusory the repeal of the Veto Act. It was at length, however, arranged, that the Home Secretary of State, Sir James Graham, should transmit a query through a third party—Mr Bruce of Kennet—to the Non-intrusion Committee :—" Whether, in the event of a proposal coming from her Majesty's government, based on the clause transmitted by Sir George Sinclair to Dr Candlish, and by this time sent by the Dean of Faculty to Lord Aberdeen—and such a proposal being made on the authority of government—will the Non-intrusion Committee appointed by the Assembly (even although they should prefer another mode) accept it, as a final settlement of the Non-intrusion question ? "

Sir George Sinclair and the learned Dean of Faculty had thus
 9.
 Lord Aberdeen agrees to the modified measure. again laid their heads together ; and Mr Hope had come to the opinion, that with such a basis, as the baronet proposed, the government ought to be satis-

fied: an opinion, which he immediately communicated, as we have seen, to Lord Aberdeen, who was at length persuaded to change his mind, as to the proposed modification of his former bill, and to regard Sir George Sinclair's clause more favourably; holding it to be, in fact, nothing more than an amplification of his own measure—a light in which it was by no means regarded by Dr Candlish and the Non-intrusion Committee.

At the meeting of the Non-intrusion Committee, where the query
 10. of her Majesty's government was submitted for
 Encouragements consideration, Sir George Sinclair was present, and
 given to Sir George Sinclair. gave in a written statement, which the Committee
 felt no hesitation in confirming, as every way accurate in reference to their apprehensions of the position and wishes of the Church; and this statement was, in a few days afterwards, placed in the hands of Sir Robert Peel, now at the head of her Majesty's councils. Sir George Sinclair did not feel warranted, in this very delicate negotiation, to make known the precise import of the communications with which he had been honoured, directly or indirectly, from different members of the Cabinet, on his now taking upon himself the position of an *amicus curiæ*; but he was able to assure the Committee, that these communications were of a highly gratifying character; so much so, indeed, as to encourage him, at very considerable sacrifices, to proceed to London, under the hope that his arrival there, with such information as could forthwith be acted on, would be regarded with satisfaction in certain influential quarters. If clothed by the Committee in that public and authorised character, which it was now necessary that he should assume, his business, as he apprehended, would be to reiterate what the Committee had already instructed their agent to communicate, on the preference given by the Church to the positive Call, in the first instance, as a mode of adjustment; and, in the second, to the Veto, as recognised in the Duke of Argyle's bill; and should government assure him, that to neither of these could they consent, he would then, but not until then, bring under their consideration the alteration or amendment which he had proposed on the second clause of Lord Aberdeen's bill, as that amendment had been altered and modified by the Committee.

It is not very easy to reconcile this programme of proceedings
 11. with what had already passed between Sir George
 Inconsistencies of this plan. Sinclair and some of her Majesty's government; or to see how, under the views taken by the latter, any room could be afforded for entering at all into the merits of the Call or the Veto as a basis of settlement. The whole arrangement presented a very curious and incongruous aspect; betraying a consciousness, in all the parties concerned, that they stood to one another in that relation, that each had, in the event of future failure, to provide themselves with a harbour of refuge. The delegate in this transaction did not go empowered by the Church to propose, on her part, the plan which he had suggested, either as coming from her spontaneously, or as one which she was likely to adopt with cordiality. On the contrary—and hence the singularity of the whole transaction—the position of the relative parties was to be this—that if her Majesty's government, having rejected the basis of both the Call and the Veto, should still be influenced by anything which Sir George Sinclair might advance, as it stood simply upon its own merits, and should be inclined to offer to the Church such a basis of a settlement as the honourable baronet proposed, to be carried into effect during the existing session of parliament, then Sir George was to be authorised to say, that the Committee would deem it, on the whole, advisable to acquiesce in his scheme of adjustment.

When it is recollected, that at this time there existed a com-
 12. mittee of ministers and elders, specially appointed
 Moderate party overlooked by government. by the party in the Church who held the same opinions as were entertained by those who now constituted her Majesty's government, on the points which had arisen between the ecclesiastical and civil courts; and with which committee many of the now subsisting cabinet had been in close and confidential communication—the opening of such a channel of intercourse, as had now been set on foot, through parties of but little name, weight, or influence in the Church, was as little complimentary to the Moderate party, as it was befitting the dignity of government. Sir George Sinclair and Mr Hope were, no doubt, ambitious to distinguish themselves as the instruments of bringing

about a reconciliation in the Church; but it only demonstrated how much, by this time, every screw was loose in the ecclesiastical machine, when there was found room for their taking the part they did in these grave and weighty transactions.

The Non-intrusion Committee notwithstanding did, in this manner, and under these limitations and reservations, authorise Sir George Sinclair to intimate to the cabinet, that the Church could conscientiously act under a measure adjusted in terms of the proposed arrangement—namely, the insertion of the words suggested into the second clause of Lord Aberdeen's bill;—that the Church would accommodate her ecclesiastical procedure to the provisions of such a measure; and farther, that she would regard it, if immediately obtained, as a great boon, inasmuch as it would unquestionably be attended with several important advantages, in leaving the office-bearers of the Church free to follow the dictates of their own consciences in every case of settlement, and preventing the risk of a collision with the civil courts. As if not already sufficiently set forth, the Committee again took particular care, however, to disclaim all the responsibility attaching to the suggestion of this particular mode of adjustment.

The anxiety displayed by the Non-intrusion Committee, that the government should appear to have originated the mode of an adjustment, through a *liberum arbitrium* to the Church courts, was, from the beginning of these negotiations, not a little remarkable, and somewhat suspicious. It was evidently felt, by not a few of its members, that even upon their own interpretation of the measure now suggested, there was a manifest surrender of the great fundamental principle, of which the Veto Act of 1835 was the exponent; and that there would lie before them a labour of some difficulty and delicacy, when they came to report proceedings to the Church, should they go into the arrangement now proposed. Circumstances, which we shall soon have to narrate, came so far fortunately to their rescue; and they were ultimately enabled to meet their constituents, without the necessity of entering on a defence of what they would have found some difficulty in explaining and justifying. There is, in fact, no

13.
The Non-intrusion
Committee accepts
Sir George Sin-
clair's bill.

14.
Cautious proceed-
ings of the Com-
mittee.

part of the drama of the Ten Years' Conflict, on which the Non-intrusionists are less disposed to dwell, than on that which exhibited Sir George Sinclair and Mr John Hope coming forward on the stage with Dr Candlish and the Committee.

It may be worth while, however, to look back at what would have
 15. been the position of the Church, had it been possible, as
 Possible position of the Church surveyed. it was not, to have re-introduced and passed the
 bill of Lord Aberdeen, with Sir George Sinclair's amendment, during the then existing session of parliament. That this amendment did not provide for the Non-intrusion principle, as defined by the Committee, might very reasonably be feared. Indeed, however reluctantly agreed to by Dr Candlish, this fundamental principle was to have been, so far, surrendered by the majority of the Committee, as to have had its integrity trusted to the proposed measure, if so advised by Sir Frederick Pollock! But, let it be granted that this surrender might have been made, under the ambiguities that rested on the Sinclair-clause, without very flagrantly compromising the principles or the consistency of the Non-intrusionists; it must have been manifest to all who regarded the position in which the Church by this time stood, that the passing of Lord Aberdeen's bill, as amended by Sir George Sinclair, could not have averted the *Secession*, unless this statute had provided for the Church courts, not only escaping from the penalties to which they had rendered themselves liable at law, but had, moreover, acknowledged or bestowed upon them powers to carry out, with impunity, the sentences that had been interdicted, and suspended by the Court of Session. Without such provisions, which it was quite in vain to expect would be conceded, and which were not asked under the now modified measure, there would have, therefore, still remained the more perplexing question of the Spiritual Independence of the Church, after that of Non-intrusion had been thus settled. It does, indeed, appear not a little remarkable, that after the question regarding the limits of ecclesiastical jurisdiction had grown out of that of the settlement of ministers, the attention of the Church should not have been distinctly, if not exclusively, directed to the adjustment of the former; without which adjustment it seemed altogether unnecessary to dis-

cuss the latter. That it was intended to settle the great point of this independence, after a side-wind fashion of legislation, is more than we are entitled to allege; but it is impossible to regard the transactions of these days, and not harbour a suspicion, that the amendment of Sir George Sinclair was the more readily entertained, that, if it did the most manifest violence to the principles of Non-intrusion, as it had been declared by the Church, it might, by an easy construction, be regarded as protecting that of spiritual independence. A power, on the part of the Church courts, to refuse to take upon trials, according to their own discretion, was, no doubt, an effectual annihilation of the rights of the patron, as much as of the right of the people to veto his presentee, without reasons assigned, and a virtual repeal of the obnoxious act of Queen Anne; but so far as it necessarily involved a right in these courts, to intrude where the presentee might be most unacceptable, it was equally destructive of the Christian privileges of the people, as these had been defined in this controversy. Hence the singular position occupied, at this time, by the two great parties in the Church. In opposing Sir George Sinclair's amendment, Dr Cook was, so far, standing forth the advocate of popular rights; in supporting it, the evangelical party were trampling these rights under the feet of the Church courts! It must, however, be noticed in passing, that the Non-intrusionists were not long in contriving a scheme by which again to occupy the popular ground.

When the fate of Non-intrusion thus hung upon the contingency
 16. of the amended bill of Lord Aberdeen being passed
 Dr Candlish's into a law, during the session of parliament which
 understanding of the amendment. was then nearly expiring, Dr Candlish and the Committee appear to have rested satisfied, that this bill gave to the Church the power to refuse taking presentees on trials, in every instance in which she might see fit, on the simple and single ground, that a majority of the congregation had objected; or in respect, even, that such a proportion, although not constituting a majority, still dissented from the settlement, as to render it, in the opinion of the presbytery, inconsistent with their duty to proceed. In so far, therefore, the measure which they were now willing to accept, if immediately granted, recognised a different rule of

settlement from that which the Church had declared to be "fundamental," inasmuch as it required objections or reasons to be given in by the people, in place of the mere dissent of the Veto. But in giving the Church the powers proposed, as these were understood by the Committee, it was held, that the people might still practically exercise the Veto, as the presbyter might reject, whether the reasons were good or bad in themselves, on the simple ground of a certain proportion dissenting. But the provision, on which Sir George Sinclair insisted that the presbytery, in coming to a judgment that it was inconsistent with their duty to proceed in the settlement, should pay a recorded respect to the reasons or objections offered against it, and to the degree of their prevalence, led to a suspicion that there was "a snake in the grass;" and it was the pertinacity of the worthy baronet in adhering to this provision, which, it may be supposed, he did under the direction of Mr Hope, that induced the Committee to insist more and more strongly on the qualifications and conditions under which they were giving their consent to the measure.

17. through Sir George Sinclair, were brought to a close, Mr Hope's understanding of the bill as amended. by the bill, as amended, and agreed to by the Committee, not having been introduced and passed, the principal parties, engaged from the beginning in bringing about this arrangement—Dr Candlish and the Dean of Faculty—came to an understanding of the meaning and effect of the proposed measure, which, if they had reached at an earlier period, much trouble might have been saved; and the Committee might have been spared the reproach of having gone so far, as they did, into the surrender of the Non-intrusion principle. Mr Hope, in consequence of the favourable reception which Sir George Sinclair's proposal had, at length, received from government, had set about preparing the drafts of the bills, which he had formerly undertaken, but from which the very violent proceedings of the August Commission—in directing those clergymen who countenanced and assisted the Strathbogie ministers to be brought to discipline—had deterred him; and giving up the basis of the Call, as inadmissible, he communicated to Dr Candlish what he proposed introducing into Lord

Aberdeen's bill ;—not being altogether satisfied with the wording of Sir George Sinclair's clause, even as amended by the Non-intrusion Committee. In support and explanation of his own amendment, the learned Dean reminded Dr Candlish of the very different position in which Lord Aberdeen was now placed—relieved as he was from the difficulties that surrounded him when in opposition to her Majesty's government, and consequently able to set forth more fully and more plainly the great extent to which his bill was really meant to go. The only limitation to which Mr Hope pointed—and he seemed to think it of no importance—was the exclusion of a negative, in any shape, by the people, on the patron's nomination—a limitation which, while it accounted for the Call having been thrown overboard by the learned Dean, the acumen of Dr Candlish detected, as explicitly precluding the Church courts from rejecting in any case, on the sole ground of the people's continued opposition ; and, therefore, throwing out the very element which the Committee had all along so steadily kept in view and insisted on—the right of the Church courts to reject judicially, in all cases where they saw fit, expressly and solely on this ground ; and, by consequence, the right of these courts, wherever they deemed it expedient, to give practically to the people a negative upon the patron's nomination. It was now clear, beyond all doubt, that there had been a most serious misunderstanding in regard to the meaning of Sir George Sinclair's amendment ; and, had not the unfulfilled condition of immediate legislation come in the way—most opportunely, so far, for all parties—it was obvious that the bill, as now adjusted, could never have obtained the sanction of the Church. At this stage of proceedings, the Dean of Faculty was raised to the bench, and could not, with propriety, take any further part in such negotiations as he had previously engaged in so deeply ; and, with regard to the Moderate party in the Church, with whom he had hitherto acted, and by whom he had been confidentially and professionally consulted, so very strangely if not discourteously. He had also contributed, through Sir George Sinclair, to lead the majority of the Church, as well as her Majesty's government, into very considerable difficulty and embarrassment ; and no man had more reason to rejoice than Mr

Hope, now the Lord Justice-Clerk, that so convenient an apology, as the unaccomplished condition of immediate legislation, had come to the relief of all the parties engaged in this singular transaction. In the closing letter, which Dr Candlish addressed to him, the principle on which alone, according to this reverend and influential leader, the Church would ever accede to any legislative measure, was very distinctly made known; and of course effectually shut the door against the prospect of such a bill as that of Lord Aberdeen, even as now amended by Sir George Sinclair and the Non-intrusion committee, *but, interpreted by Mr Hope*, ever being accepted, while the existing majority retained their influence over the councils of the Church. There was, at this time, almost as little hope for it from the Moderate party, should they be restored to power; and hence, when at length this party was left in this position by the Secession, which took place in 1843, this bill—modified, as it was, to meet Moderate views—was still passed through parliament without consulting the Church. The great and formidable obstacles presented to any legislation whatever, which had been presented by the retaining of the Veto law on the statute-book of the Church, and her refusing to declare the sentence of deposition pronounced against the Strathbogie ministers, to have been *ab initio* null and void, had been removed by the Church herself, by the time this modified measure came before the Assembly. No opposition, therefore, on these grounds, was to be apprehended from the House of Lords, who would never have consented to the enactment of new laws, while the old, as declared solemnly by themselves, were disregarded and violated by the Church; and her Majesty's government felt, that they could afford to pass by the "violent Moderates" of the Kirk; aided, moreover, as Ministry knew they would be, in any measure professing to extend popular rights, by those of the Non-intrusion section, who had not accompanied their old friends in their secession; and were naturally anxious to be furnished with some plausible pretext for remaining within the Establishment. Government had also, by this time, found, from experience, how difficult it was to come to a previous understanding with such bodies as the Church, on the subject of any legislative mode of settling her affairs. It

was not, however, the less remarkable, that her Majesty's government, as now composed, framed the measure which they ultimately carried through parliament, although not without violent opposition in other quarters, against the views of that party in the Assembly, who had paved the way for its introduction into the legislature, by upholding the jurisdiction claimed, and the judgments passed by the civil courts in the Auchterarder and Strathbogie cases; and in conformity with the wishes and views of a small and influential section of churchmen, who had all along opposed these courts; and who, even after the Secession had taken place, did all in their power to prevent this course being pursued, and by this means to justify, if not to maintain, the Church in her position of resistance to the law of the land! The reasons, that led Sir Robert Peel to the adoption of this policy, will appear when we reach that period in our annals. In the mean time, we notice that the broad and intelligible principle laid down by Dr Candlish, in his letter to the Dean of Faculty, as that from which the Church would never depart, was this,—“That however the people may be required to give reasons, and whatever precautions may be taken against factious motives, a minister is not to be settled if they, by a majority, continue to dissent.” It was this rule or principle which, as the Committee understood in their communications with Sir George Sinclair, had been at length conceded by Lord Aberdeen, and which they believed the Dean of Faculty to have fully recognised, when he stated it as his opinion that the amending clause of Sir George Sinclair “gave the Church courts the power to enforce the Veto in every instance, if they chose.” It was, indeed, generally conjectured that both the Baronet and the Dean had been obliged to yield on this point to Lord Aberdeen; and it is worthy of notice, that when the noble lord introduced the bill which he carried through in 1843, he inserted a clause distinctly tying up the Church courts from exercising any such power. At this distance of time, and with all the circumstances before us, it appears remarkable that both parties should have apparently failed to see, that they had each so far agreed that a presbyterial veto on the nomination of the patron was to be enacted, or rather re-declared; and that the people, in dissenting

from a settlement, were to give in objections or reasons ; but that herein lay the difference between them—that Lord Aberdeen demanded that, in the case of Veto grounded on the mere prevalence of the objections, the presbytery should still judge and decide on the validity of these objections, not on the mere fact of their prevalence, and should record their deliverance, and its grounds ; while the Committee desired that the presbytery should not be bound to give such a homologation of the objections, or to record any reason for their judgment, beyond the mere dissent of what they accounted a sufficient proportion of the parishioners, refusing to withdraw their opposition. The object of Lord Aberdeen was obviously to bring public opinion to bear upon the Church courts, who might reject on the mere prevalence of reasons the most frivolous and unfounded : That of the Committee must be held, therefore, as having been to exclude public opinion from bearing on their judgments, by resting these judgments on a ground of fact, not of argument or proof. Lord Aberdeen also assumed, all along, that the objections or reasons on the prevalence of which—when themselves duly judged of on their merits, and recorded—rejection might be rested, were reasons and objections legally competent, of which the civil courts alone were the proper judges ; while the Committee regarded even this limitation as an invasion of the spiritual independence of the Church, and as opening a door to the very evils of which they were complaining, and for which they were seeking a remedy—the entrance of the Court of Session into the domains of the Church. The noble promoter of the bill understood by the presbytery “ acting in their judicial capacity,” that they were judging of the validity and worth of objections or reasons offered by one party against a right claimed by another being conferred, and on which, of course, a decision must be given : the Committee held, that the presbytery proceeded in their judicial capacity, when, in the words of the act of Parliament of 1690, they cognosced the whole affair, and upon this cognition gave a deliverance, if they saw fit, confined to the mere fact of the people’s continued opposition. “ In after times,” says a writer of these days, “ when the present generation shall have passed away, and the controversy, now so fierce, shall exist in history

alone, posterity will hardly believe that Scotland's noblest institution was once rent in twain, and every corner of the land devastated with strife, because some wished a reason to be rendered, when presentees were rejected, and some wished for none. The satirist, in his lampoons upon religion, will point to the strange frenzy, as a proof of the egregious eccentricity of men who in their day were reputed grave and good; and the pious moralist, as he peruses the chapter which records this miserable feud, and finds its origin to be so insignificant as to border on the ludicrous, will sigh to think, that long-enjoyed peace and prosperity, and many privileges, should thus inflate the human heart, and make it so wanton and thankless to the God who conferred them."

It has already been noticed that, during the administration of
 18. Lord Melbourne, the Moderate and Constitutional
 Moderate and constitutional Deputation. party in the Church had sent a deputation to London, to lay before government the views and wishes of that section of the General Assembly which they represented. The very existence of such a body, assuming such an attitude, beyond the walls of the Church, indicated a state of division within these walls, the most alarming and dangerous; and the very step now adopted by them was one, in manifest advance towards that position, where the truly important question must be determined by the State—whether the majority, acting in resistance to the law of the land, and dealing out spiritual censures on those who obeyed it, or the minority who obeyed its decrees, and suffered ecclesiastical degradation for so doing, constituted the Church of Scotland, as Established by Law. It is true, indeed, that from determining this question in the only way in which it could be resolved, the State was in the end relieved by the Secession which took place in 1843;—the rebellious majority choosing rather to relinquish their livings than abide its issue. The present movement of the Moderate party, in sending a deputation to London, was not, however, the less important, as it presented to her Majesty's government two different bodies pretending to be the Church of Scotland, yet holding principles and pursuing a policy directly opposite to each other. The reception of the Moderate deputation by the members of the Whig administration, was courteous in

every respect ; and in some important particulars it was satisfactory.

In the "Statement," which the Moderate deputation placed in
 19.
 Statement of the the hands of her Majesty's government, they set
 Deputation. forth what they termed "the gross injustice and
 utter incompetency" of the proceedings of the majority in the
 Assembly in the Auchterarder, and more especially in the Strath-
 bogie case. They informed government that, so long as the civil
 courts had made no interposition in arrest of the proceedings
 under the Veto Act, they—the minority, who had protested against
 its passing—had nevertheless, for the sake of peace and good
 order, gone along with their brethren, in carrying that act into
 effect. But when a case arose, and was adjudicated in the civil
 court, declaring the Veto illegal, the minority felt that they could
 no longer occupy the ground of ignorance as to how the law stood ;
 it was now clearly laid down ; and a perseverance or concurrence
 in observing the Veto, or enforcing its penalties where infringed,
 amounted clearly to a breach of the law of the land. Yet even
 after this, and looking to the fearful consequences of holding *de*
facto, as well as *de jure*, that the sentence of suspension, subse-
 quently passed on the Strathbogie ministers, was null and void,
 the minority contented themselves with entering their solemn pro-
 test, that these ministers had done nothing subjecting them to
 ecclesiastical censures. The memorialists were ready to acknow-
 ledge, on the part of those whom they represented, that, in thus
 stopping short, as many had done, they might have been wanting,
 both in what they owed to their suspended brethren, and to the
 full and practical exposition of their own convictions of duty. But
 they trusted her Majesty's ministers would do justice to their
 motives, hoping, as they did, that their own forbearance, in not
 giving full effect to their avowed and conscientiously cherished prin-
 ciples, would have led, in the providence of God, to the healing of the
 breach ; and this they were the more induced to look for, as they
 distinctly intimated in their protest, that, if no healing measures were
 adopted, they would ultimately identify themselves with their suf-
 fering brethren. The events of 1841 convinced them, that the time
 was come when an adherence to half measures would imply an

inexcusable dereliction of principle ; and when it was incumbent upon the minority in the Church to take up ground of decided and uncompromising resistance to the majority. This their determination they had intimated to the Assembly 1841, previous to the deposition of the Strathbogie ministers ; giving notice that, in the face of such a sentence, they would regard these ministers as still within the pale of the Church of Scotland. On the finding of the libel against these ministers to be relevant, and before the passing upon them of any ecclesiastical censure, a paper to this effect had been laid upon the Assembly table, which that venerable body refused to receive.

The "Statement" further went on to say, that her Majesty's ^{20.} government were now made fully acquainted with the position in which the minority of the Church of Scotland, represented by the Moderate and Constitutional Deputation, were at length placed. This minority, they were told, would hold it to be a palpable violation, alike of their oaths of allegiance to the sovereign and of their ordination vows as clergymen, were they to submit to, or did they, indeed, fail to resist, the illegal and incompetent acts of the majority. They were fully alive to the consequences, if not protected by the government of the country ; and they had felt it their duty to submit their case to its serious attention. But whether this protection was vouchsafed or not, the path of duty before them was plain, and at all hazards they would pursue it. If they might venture to lay before her Majesty's ministers any suggestions, with the view of restoring peace to the Church, they would, they said, respectfully state their opinion, that the remedy of a declaratory act, which had been proposed, did not appear to them the eligible course, as there was no sufficient time afforded for digesting it with the requisite care ; and they deprecated the throwing the constitution of the Church of Scotland rashly before parliament itself. An instruction to the law-officers of the Crown, to maintain in the civil courts the cause of the Strathbogie ministers, and of all others placed in similar circumstances, appeared to the Deputation to deserve the serious and favourable notice of her Majesty's government. They were persuaded that the large body of office-bearers in the Church of

Scotland, holding the same opinions as themselves, would be satisfied with this course, as it would assure them of protection in the faithful and conscientious discharge of their duty, while it would have the additional and very weighty recommendation of leaving untouched the existing state of the law. At the same time, they stated that, if her Majesty's ministers thought that less stringent measures might prove effectual, the minority were not only willing, but most anxious, that such should be tried. And in the mean time, refraining from asking any active interposition in their favour, they would incur the risks of expensive and harassing lawsuits in vindication of their rights, in the hope that the majority might, in time, have recourse to wiser counsels than they were now pursuing; but they did expect, they said, that her Majesty's government would publicly declare, that they would take no active part on the opposite side—as for example, presenting to any of the parishes of Strathbogie which the Assembly now held to be vacant, in virtue of its late sentence of deposition; and would consent to no alteration in the law of patronage, until the Church had, in the first instance, fulfilled the obligations which, by her acquiescence in that law, she had manifestly contracted. The Deputation, in the name of the minority whom they represented, did, indeed, strongly deprecate any change upon that law; and they stated that they would use every constitutional means to resist it. They gave it, in conclusion, as their decided opinion, that matters had reached in Scotland the fearful pass at which they had arrived, from the delusive and unconstitutional expectation of change, which a vacillating and uncertain policy had cherished; and they were persuaded that, if these expectations were once for all dissipated by such a public declaration, on the part of government, as they had suggested, the peace of the Church of Scotland would be speedily restored.

The statement of the Constitutional Deputation, to her Majesty's
 21.
 Character of this government, was every way characteristic, and
 Statement. worthy of the Moderate party in the Church of
 Scotland. It sustained the reputation for consistency of principle and conduct which they had attained, while it displayed a forbearance towards those of whom it complained, as violating

the laws of both Church and State, contrasting strongly with the course pursued by the majority. It rested honestly and explicitly on the doctrine of the civil magistrate's supremacy in the matters that had arisen between the majority and the minority in the Church; and was just the exercise of that *refugium*, which the Confession of Faith, and the laws and constitution of the Church of Scotland, have given to all who may feel themselves aggrieved by what they account illegal and incompetent ecclesiastical proceedings. Whatever views might be entertained of the demands made by the majority, for legislative interference in the affairs of the Church, the Moderate committee drew the attention of government to what the executive owed to the law, as it had been pronounced, and to those who had been made by the Church to suffer for having yielded obedience to it;—a matter utterly unconnected with the *questiones vexatæ* of Non-intrusion and spiritual independence. They abstained from pointing out, what they might have well taken upon them to do, how the law had been openly outraged by clergymen, trampling upon the interdicts of the Court of Session, and publicly perpetrating the acts which that court had inhibited; and how impunity towards the guilty parties had been extended by the high legal functionaries of the Crown in Scotland, to whom is specially committed the guardianship of all the interests involved in the law being duly honoured and respected. Such a state of matters, it must be acknowledged, did not bespeak a very strong, if it even indicated a very honest administration; and it so happened, that at this time the Whig cabinet of Lord Melbourne was staggering to its fall, and the Church of Scotland was left for a still longer time to be torn by fresh dissensions, and renewed and increasing agitation, and the laws of the country to be more and more outraged by ministers of the gospel.

Although this Deputation was unable to obtain that decided
 22. and publicly expressed approbation which they
 Satisfactory assurance from the sought, of the course pursued by the minority in the
 Home Secretary. Assembly, in demanding obedience to the law, as it
 had been declared; and in countenancing, as they had done, the
 Strathbogie ministers, who were suffering for having obeyed it;
 and although they could not consequently reach, in this way, the

authoritative condemnation of the measures, which the majority had pursued—and which condemnation, they believed, would have produced the best effects, both in opening the eyes of the Church, and compelling her to retreat within the precincts of the law—they received assurance from the then Most Noble Secretary in the Home department, Lord Normanby, that the Crown would not so far pay respect to the sentence of the Church, in regard to the Strathbogie ministers, as to regard a vacancy as having occurred, in virtue of it, in the living of Mortlach, the parish of one of the deposed clergymen. This declaration on the part of the Whig government was, at least, one step in advance to a more consistent and respectful position towards the civil courts, and their judgments, than had been occupied in the case of Lethendy and Kinloch, where a second presentation was issued by the Crown, and the presbytery of Dunkeld brought to the bar of the court to receive punishment for having acted upon it, even in the guarded manner in which they had done, in face of an interdict by the civil magistrate. Her Majesty's ministers had been urged by the Deputation of the majority of the Church, then in London, to present again to Mortlach; and it had been gravely proposed to the Moderate and constitutional Deputation, whom they so far recognised, that they should concur in the request; that, upon the Crown complying, the question of the deposition of the Strathbogie ministers, and of course of the Church's power in matters ecclesiastical, might in this manner be tried. By this proposal of the Non-intrusion Committee, another was added to the singularly inconsistent and contradictory commentaries which the dominant majority in the Church were every day affording, on the text of spiritual independence and inherent rights; and not a little surprise was created, that the very men who were themselves in the act of refusing obedience to the law, as pronounced on their own appeal to its award, and of punishing those who had yielded this respect, should unblushingly propose to run another legal race, in which, if defeated, the same disregard to constituted civil authority might be expected. In regard to the introduction of a legislative measure, to settle the affairs of the Church, the Moderate and Constitutional Deputation found Lord Melbourne neither prepared with, nor,

indeed, inclined to bring forward any bill ; and they felt it the less necessary to urge upon his Lordship, both the danger of attempting to legislate, and, now that the courts of law had expiscated the doubtful points of jurisdiction, the absence of all good grounds for such an attempt. They were commissioned to state, that the minority in the Church were quite willing to throw themselves on the protection of the civil courts, against the illegal proceedings of the ecclesiastical ; but, at the same time, they were most desirous of, and they thought themselves well entitled to, a declaration from her Majesty's ministers, in their places in parliament, that the course which the minority were pursuing was approved of by government. This declaration, however, they were unable to obtain ; and a few months afterwards Lord Melbourne was succeeded by Sir Robert Peel, at the head of a Conservative cabinet.

23. The Moderate and Constitutional committee had, through its deputation, when in London, been in intimate and confidential communication with several noblemen, and others, who now formed part of the new cabinet ; and the government of Sir Robert Peel were no strangers to the sentiments of this party in the Church, on the inexpediency of attempting a legislative measure, at the time when the proposal of Sir George Sinclair was made to them, and with their decided and frequently recorded disapproval of the powers which his suggested amendment gave to the Church courts. Such, however, appears to have been the desire of Lord Aberdeen—now a Secretary of State, and on whom the matter chiefly devolved—to bring about peace in the Church of Scotland, that he entered into the negotiations that had been opened by the Dean of Faculty and Sir George Sinclair, as if the Moderate and Constitutional party had been as willing as the Non-intrusionist, to apply to parliament ; and had never set forth the dangers which they apprehended to the objects in view, by subjecting the government and discipline of the Church to such an ordeal.

24. In the mean time, it was easy to see that an attempt to settle the Scotch Church question, originating as did the present, and encumbered at its very outset with so many guards and limitations on the part of the

Failure anticipated.
—Difficulties over-looked.

Non-intrusion Committee, and so cautious a reservation by the intermediate negotiator, as to the precise import and terms of his communications with government, would in the end come, as it did, to nothing. In what appears to have taken place between Sir George Sinclair and the Committee, little if any mention was made of an obstacle to this settlement, as strong and palpable as that of coming to one opinion on "the fundamental principle" itself—namely, the position of the Strathbogie ministers, who had by this time been deposed by the General Assembly. The difficulties presented in this quarter had not, however, escaped the notice of either the learned Dean of Faculty or Sir George Sinclair; nor is it to be presumed, that they were overlooked by Lord Aberdeen, upon whom the restoration of these ministers by the Church, as a *sine quâ non* to legislation, had been urgently pressed by the Moderate and Constitutional deputation, and from whom the Strathbogie clergymen had received the most unequivocal pledge, that, until they were reinstated, no measure would be either introduced or supported by government for settling the affairs of the Church. As soon, therefore, as the worthy baronet had, at the outset of his undertaking, so far arranged matters with the Non-intrusion Committee, as to enable him to proceed to London, he adopted measures to obviate, if possible, the difficulties presented in the Strathbogie case; and he wrote to one of the ministers under alleged deposition, from Carlisle, on his way to the metropolis, to which he was now hastening with all speed, to overtake the rising of parliament. In this letter from Carlisle, he enclosed the draft of a letter, which it was proposed that this minister and his brethren should adopt as their own, and forward, without loss of time, to the Moderator of the General Assembly;—a letter that had been prepared by the Dean of Faculty and himself, and had, according to the Dean, been submitted to the Church Committee, and approved of by them. It now appeared sufficiently evident, that the matters which Sir George Sinclair could not fully communicate to the Non-intrusion Committee, at the outset of his negotiations, related to a satisfactory disposal of the Strathbogie ministers—an indispensable requisite, in certain high quarters, to any further steps in the settlement proposed. It seems to have

been all along calculated, by both the Dean and the Baronet, that there would be no very formidable obstacle presented in this quarter, more especially as the former learned gentleman had been the legal and confidential adviser of the ministers in every step which they had taken; and it might be presumed that they would be found ready to follow his advice on this, as on former occasions. In the private letter forwarded by Sir George Sinclair from Carlisle, he spoke of his wish to exact as little as possible from the ministers, in the way of concession to their persecutors; and Mr Hope, who had also written to one of these ministers, displayed an equal solicitude to prevail upon them to yield as much as possible to the Church. The learned Dean, about this time elevated to the Bench in Scotland, had been the counsel of the Strathbogie ministers, during the eventful struggle in which they had been engaged; and it had been with his knowledge and approbation that these ministers had taken up the ground which ultimately conducted to their suspension and deposition. In occupying this ground they had, of course, as honest and upright men, the approbation of their own consciences. The general sympathy of the country had accompanied them. They had met the applauses of one of the most numerous and enthusiastic public meetings, that was ever convened in Edinburgh, composed of men of all ranks, creeds, and conditions of life. Public addresses had been poured in upon them from various parts of the country, encouraging them in the position of obedience to the law, which they had taken up; and a large body of the ministers and elders of the Church had so thoroughly sympathised with, and supported them, as to have still regarded and treated them as if no sentence of deposition had ever passed against them—and had consequently subjected themselves to the highest censures of the Church; and, if the Strathbogie ministers were wrong in the course which they had pursued, to the most richly deserved punishment. Of the body of clergymen who had thus stood by the Strathbogie ministers, it was well known that several had only been prevailed upon to do so, in consequence of the step having been sanctioned, as at once legal and expedient, by the learned Dean of Faculty.

It was in these circumstances, that the letter from Sir George
 25.
 Nature of the Letter. Sinclair, on his way to London, and another from
 the Dean of Faculty, reached the ministers of
 Strathbogie. In the draft-letter to Dr Gordon, the ex-Moderator
 of the General Assembly, which accompanied these more personal
 and private communications, these ministers were required to
 declare that, on mature reflection, they were of opinion that they
 should have acted in more strict accordance with the rules of
 canonical discipline, and more clearly shown their readiness to
 yield obedience to the commands of the Church, when not reluctantly
 compelled to do otherwise by the conflicting authority of
 another tribunal, if they had at once abstained from the performance
 of their spiritual functions, as soon as the decision of the
 General Assembly was intimated to them. And they were further
 made to express to the Moderator, and, through him, to the Church,
 their sincere regret and concern, that, whatever steps they took for
 their protection, they had not so far deferred to the sentence of the
 Church as in the mean time to have abstained from the continued
 exercise of their ecclesiastical functions. They were also required
 to acknowledge that, by not acting in this manner, they had
 increased the difficulties in which the majority of the Church were
 placed; and that they had exhibited an appearance—for it was
 not in intention or purpose—of disregard to the authority and
 discipline of the Church, which, by another course, they might have
 avoided. And they were made to hint, that they were led astray
 in believing that certain steps, which they had taken in the courts
 of law, were indispensably necessary, not only as regarded their
 patrimonial interests, and those of their families, but for the vindication
 of their previous proceedings. They were further to express
 their unfeigned grief, that they should have been compelled to take
 the course they had pursued, and their readiness at once to withdraw
 all the civil actions in which they had the misfortune to be
 engaged in opposition to the Church, if they could, by such an act,
 enable the General Assembly, in the exercise of its clemency, and
 viewing with tender and compassionate regard the situation in
 which they were placed, to restore them to the exercise of their
 ministerial functions. The draft of this most extraordinary letter

concluded with these words—"Should any considerations of wisdom or generosity enable and induce the General Assembly to receive us once more, as attached and obedient children, within the pale of the Church, such a consummation would be hailed by each and all of us with a satisfaction which no words could describe or exaggerate, and a gratitude which no time could obliterate or impair." When it was recollected, that at this very time the ministers of Strathbogie, acting under the advice of the learned Dean of Faculty, had brought an action in the Court of Session, to have the sentence of deposition, which had been pronounced against them by the General Assembly, reduced as illegal—and consequently to have it found, that they had never ceased to be "attached and obedient children" of the Church, in all things in which the Church had a right to exact their obedience; and had never been cast out of the pale, into which they were now made to pray for re-entrance—the proposal made to them, and coming from such a quarter as it did, naturally excited the most profound astonishment.

When the communications that had been going on between Sir ^{26.} George Sinclair, the Dean of Faculty, and Dr Candlish, were made known to Lord Aberdeen and Sir Robert Peel, it was stated that one of the bases on which the whole was to proceed was the reponing of the Strathbogie ministers; but it does not appear that her Majesty's government, or Lord Aberdeen in particular, were in any manner acquainted with the conditions on which their agreeing to a settlement of the Scottish Church question, as proposed by Sir George Sinclair, was to be purchased. Sir Robert Peel had never shown any difficulty in reaching an opinion on the question of their restoration. When waited on by Mr Dunlop, who was then accompanied by the Duke of Argyle, Sir Robert gave the deputation to understand that, without the restoration of the Strathbogie ministers, no legislative measure could be passed; and that any measures adopted must provide, that no similar occurrences should in future take place. He held that these ministers had done no more than what the Church, by her own appeal in the Auchterarder case, had pledged herself that all her clergy would do—obey the law of the land as laid

^{26.}
Ignorance of Lord
Aberdeen.

down by the civil courts; and that, if the Church had acted honestly, she would have applauded, not punished these ministers. When he gave the Moderate and Constitutional Deputation an audience, he still more explicitly avowed his sentiments on these points;—a position, in regard to the very root of the question, which precluded the possibility of his approving of the concessions now demanded from the Strathbogie ministers as the price of their restoration. The peace of the Church was, doubtless, a great object to be attained; but there was a price at which even that object might be too dearly bought; and such a price her Majesty's ministers might have regarded the conditions, demanded from the Strathbogie clergymen, by those who were now endeavouring to bring about an adjustment of this long-contested question. Although the learned Dean might advise, as he did, that, while the preachers sent by the Assembly to the parishes of the seven ministers—and against whom interdicts had been obtained, which were most openly violated—were to continue their illegal ministrations in these parishes, they themselves were not to seek the countenance of their brethren in the Church, who were willing to assist them, it is hardly to be supposed that her Majesty's government would have approved of such an arrangement. Lord Aberdeen was not ignorant, besides, from what the Moderate and Constitutional party had communicated, that the alternatives now presented to government were, the deposition of every Moderate minister of the Church, who had stood by the civil courts and their judgments—unless, indeed, they also were prepared with humble professions of penitence and regret at the course which they had pursued; or the secession from the pale of the Establishment of those who, on no other conditions—if even upon these—would be retained within it. These latter were undoubtedly a numerous and a highly talented body of ministers and elders; but their places, as experience afterwards showed, might be supplied with less difficulty, than appears at this time to have been apprehended.

It was likewise, no doubt, a very laudable ambition, by which
 27. we may believe the then Dean of Faculty was
 Laudable ambition frustrated. inspired in all these transactions—namely, that he
 might go down to posterity as the ecclesiastical patriot, who had

healed the breaches in the Established Church of his country, after the task had failed in the hands of the ablest ministers and laymen, of whom that Church could boast. But the result of events came singularly in the way of such a worthy reputation accompanying the name of Mr Hope. The peace, character, and efficiency of the National Church of Scotland were ultimately achieved, not only without his assistance, but in direct and strenuous opposition to the course which he was now chalking out for the attainment of these ends.

It will ever redound to the honour of the ministers of Strath-
28.
Reception of the
Letter. bogie, that they refused to adopt or subscribe the document that had been transmitted to them from Mr Hope and Sir George Sinclair. It required of them to confess errors, of which they were not conscious; and as it had been sent to them with a stipulation, that it should be agreed to without communication with any of their brethren in the Church, or even with their legal adviser on the spot, it sought from them, if consented to, not only the most unqualified, but a very strange abandonment of those who had supported them in all that they had done. It recognised the sentence of suspension and deposition, as having been at least ecclesiastically valid, and as having at least spiritual effect,—assigning these ministers a position in which they had all along asserted that they had never been competently placed; and from which the judgment of the General Assembly in 1843, finding these sentences to have been *ab initio* null and void, most effectually screened them. It gave them, moreover, very little time to reflect on a step so important, as involving the integrity of their whole conduct, as they were required to forward an immediate reply, whether they agreed to it or not—matters being represented to them as ripe for a settlement, and only waiting for their determination.

In advising, if he did not go so far as urgently to press, the
29.
Assurances given
to the ministers. Strathbogie ministers to adopt the letter forwarded to them from Carlisle, the Dean of Faculty assured them that, on their doing so, they would be reponed; stating that this had been agreed to by the leading men of the Non-intrusion Committee, and intimating that their reinstatement was, in fact,

one of the bases of the proposed settlement, and one without which the government would go into no arrangement, and would forward no legislative measure whatever. No doubt, the Dean spoke of "the exact footing" on which this reponement was to stand as not settled; and left it to be inferred, that something more might be demanded than the expressions of penitence contained in the draft letter; and that, after all, reponement, as understood by the Church Committee, might not mean a simple release from the sentence of deposition, leaving the ministers as if no such sentence had ever passed. It may very fairly, however, be presumed, that when the government intimated, as they had done, that the protection of the Strathbogie ministers would be a *sine quâ non* to any legislation, they meant that those ministers should be simply released from the ecclesiastical censures, which they, the government, had all along held had been illegally and unjustly inflicted; and a confession of error in the steps which they had taken, and penitence for the course they had pursued, as required in the joint letter of the Dean and Baronet, would have been the very last conditions which the government would have expected or sanctioned. As there is no evidence that the letter, which it was proposed that the ministers should sign, was ever laid before government, it may be presumed that Sir Robert Peel was kept in ignorance of its existence. The Dean had, indeed, intimated to the ministers, that the Church Committee had approved of the draft letter forwarded by Sir George Sinclair from Carlisle, as sufficient, and that they had sent Sir George to London with the proposition; but nothing appears to prove, that either Lord Aberdeen or Sir Robert Peel had seen and approved of this letter. As it happened, the previous condition of obtaining the legislation sought, during the existing session of parliament, was found impossible to be complied with, before the stage of the negotiations regarding the second basis of settlement could be reached. The learned Dean did not, indeed, state at what time such an understanding, in regard to the Strathbogie ministers, had been come to; and we have already seen, that when Dr Candlish first met Mr Hope at Sir George Sinclair's request, it was agreed on, that the question of a settlement of the Church affairs should, at that time, be considered irrespective of the Strath-

bogie case. As Mr Hope does not appear to have held any direct intercourse or communication with the Non-intrusion Committee, the information which he conveyed to the Strathbogie ministers, as an inducement to them to sign the letter transmitted to them, must have been furnished from some other quarter. It was stated to them, that the two bases of settlement—the adopting of the amendment suggested by Sir George Sinclair, and the reponing of the Strathbogie ministers—had been placed before Lord Aberdeen and Sir Robert Peel, and that on these bases they were willing to proceed. In the same manner, it was intimated, that these bases had been submitted to the Church Committee, and approved of by them—the very draft letter to be signed by the Strathbogie ministers having been before them, and Sir George Sinclair having been sent by them to London with these propositions. Sir George Sinclair, in his letter from Carlisle, was equally precise on this point—“I am now able to say, that if you and your brethren will agree to transcribe and sign the enclosed letter, it will be accepted by the Assembly, and lead to your restoration.” And in his published “Selection,” after all negotiations had terminated, the worthy baronet stated, that the portions of this draft letter, which had been added by the Dean of Faculty, had been declared to him, by the Non-intrusion Committee, to be the most satisfactory part of the document. It need scarcely be said, that these were exactly the parts to which the Strathbogie ministers felt the greatest repugnance. The only case, according to Sir George, not provided for between the Committee and himself, was that of Mr Edwards, the minister of Marnoch; but he pledged himself to endeavour procuring for him also the most favourable arrangement.

It was not the least singular feature in these transactions, that the learned Dean of Faculty should have come into anything like amicable contact with the Non-intrusion Committee of the General Assembly. This contact was, doubtless, of no very direct nature, so far as this Committee itself was concerned; for the learned counsel was careful to confine his part in the drama to an intercourse with Dr Candlish alone, as the parish minister of his friend Sir George Sinclair, to whose impor-

30.
Remarks on these
proceedings.

tunities he had, moreover, yielded, in so far entering the field as a peace-maker. But the destiny of the noblest and most boasted of Scotland's institutions appeared not the less to hang, for a while, upon the fiat of this strangely brought together triumvirate; while, fortunately for the best interests of the National Church of Scotland, these compromising measures, that would have trampled all that supports her in public estimation, in the dust, must have been ultimately defeated by the stern and honest attitude of the ministers of Strathbogie.

Nothing can show more strongly the loose and indefinite
31.
Declaration of the
Committee. manner in which the whole of these transactions were gone about, by the parties concerned in them, than the declaration of the Non-intrusion Committee, soon afterwards made known, that the important subject of the restoration of the Strathbogie ministers had never been before them, in their negotiations with Sir George Sinclair, and through him with her Majesty's government; and that, consequently, no conditions or stipulations, as to this matter, had been made. It was always distinctly understood by the Committee, that had these negotiations terminated in the adoption of the bill of Lord Aberdeen, as modified by Sir George Sinclair, the Church would still have been at full liberty to deal with these ministers, according to the rules of her ordinary discipline; and even in the event of restoring them to their ministerial character and functions, to provide, if she saw fit, for the dispensing, by other hands than theirs, of the ordinances of religion within their parishes. If this was the "protection," which the Dean informed the ministers had been most cheerfully, nay, "willingly and kindly, and considerately admitted," by the Church Committee, it could not, certainly, have formed a very strong motive for these ministers signing the penitential epistle, which had been forwarded to them. Their resolution not to comply with the Dean's earnest request was, no doubt, come to in the full faith that, by the protection for which he had stipulated, and to which they thought the Church Committee had agreed, was an immediate and *bonâ fide* restitution to all their former status in the Church, and, above all, in their own parishes. But had they consented to sign and adopt the letter transmitted to them, under the assurance

given to them by both the Dean and Sir George Sinclair, that they would, in consequence, be reponed, they might have found themselves grievously disappointed, after all their confessions of error and acknowledgments of penitence! It so happened, however, that the refusal of the Strathbogie ministers to come into the previous arrangement, projected by Sir George Sinclair and the Dean of Faculty, was, as we have seen, in no manner productive of the unsuccessful issue which attended their attempts;—these attempts having been rendered abortive by the stipulated condition, that the bill, as amended, should be introduced and passed during the then existing session of parliament, not having been complied with. As it does not appear, therefore, that the mode proposed by Sir George Sinclair and the Dean of Faculty, of getting over the main difficulty presented by the Strathbogie case, was ever made known to her Majesty's government, so is there no evidence that the fact was ever communicated to them, that had the condition of immediate legislation been complied with, and the first basis of settlement agreed to, the case of the deposed ministers still remained to be disposed of.

During the period when Sir George Sinclair was exerting
32.
Opinions asked by
Sir George Sinclair. himself so zealously, to bring about a settlement of the Scottish Church question, he attempted, very naturally, to fortify, if he could, the measure which he proposed for this end, by the concurrence and approbation of distinguished and influential individuals, removed to a comparative distance from the scene of action; and with the hope, at least, that, strengthened by their views, he might induce the majority in the Church to desist from agitating Scotland, as they were now threatening to do, more extensively than ever, by means of parochial and other associations;—the object of this agitation being to obtain that which it was, by this time, clear neither parliament nor her Majesty's government would ever grant. From the Archbishop of Canterbury, Sir George received an expression of surprise, that a measure, the terms of which appeared to all parties, as he understood, to be unobjectionable, should be lost, because the condition, that it should be immediately sanctioned by the legislature, had not been complied with. The question did not appear to

his Grace to be one of time ; nor could he see how terms proper in October would not be equally so in February. While he felt himself unable to give an opinion upon these terms, he said he had been led to hope, that they would restore peace to the Church of Scotland ; and he was unwilling to believe that an obstacle, which did not affect the intrinsic merits of the question, would even yet be permitted to lead to its rejection, and to prevent the harmony, which he sincerely desired to see re-established in the Church of Scotland. In making these remarks, the Archbishop was, of course, altogether ignorant of the misunderstanding which, as it afterwards appeared, had all along existed, as to the real nature and import of the terms, on which both parties had been represented to him as agreeing, as well as of the obstacles which the case of the Strathbogie ministers presented.

The Bishop of London had also been informed, by the worthy
 33. baronet, of the negotiations which, as an *amicus*
 Bishop of London. *curiæ*, he had been carrying on between the Govern-
 ment and the Church of Scotland ; and which, he stated to his
 lordship, had at length led to the somewhat reluctant acquiescence
 of both parties in his measure ; and the bishop was, at the same
 time, made acquainted by Sir George, with the fact of the whole
 of these negotiations having fallen to the ground, from the impos-
 sibility of bringing the measure forward during the then existing
 session of parliament. By this time agitation had recommenced,
 if, indeed, it had ever subsided in Scotland, to obtain the absolute
 Veto of the Duke of Argyle's bill ; and the object of Sir George
 Sinclair, in addressing the Bishop of London, was, to procure from
 him an expression of his opinion, that the Non-intrusionists ought
 to be satisfied with the proposed modification of that of Lord
 Aberdeen ; and that it was in vain to expect, that the legislature
 would ever sanction that on which they were bent, to the evident
 danger of the Church Establishments on both sides of the Tweed.
 The Bishop of London showed no hesitation in giving his opinion
 on the nature, and the probable reception by parliament, of the
 measure on which the Non-intrusionists were bent ; and, while he
 stated that he was not directly concerned in the issue of the con-
 test, he avowed himself by no means insensible to the evils which

it was working, by its continuance, to the Church of England, as well as that of Scotland, and to the cause of Christianity at large. In regard to the Veto measure demanded for the people, by the leaders of the Assembly, his lordship used the following very decided language: "It would not obtain the consent of the House of Commons; and, in the House of Lords, it would find favour only with an insignificant minority. I hold the principle which it involves to be inconsistent with good government, as well as with the real interests of the Church. No threat of separation, no danger of schism would, I am persuaded, induce the House of Lords to sanction it."

Lord Brougham was also applied to, by the very zealous and indefatigable baronet; and his lordship's opinion, as
 34. Lord Brougham. to the necessity of any legislative measure whatever, for the settling of the Scottish Church question, respectfully requested. He was also asked, how far he thought parliament or the bishops would be prepared to legalise the Veto; and, whether the Church ought not to be satisfied with the *liberum arbitrium*, as proposed in Lord Aberdeen's modified bill. His lordship was brief in his reply to this application; and contented himself with expressing his conviction, that the Non-intrusionists would never get anything more than what Sir George had intimated that government was ready to give them; while, at the same time, he did not give any opinion, he said, as to the right or wrong of this concession. In reference to the continued, and still farther threatened agitation over Scotland, to obtain a better measure, as the Church might regard it, and to the resistance which she was offering to the courts of law, his lordship had no hesitation in saying, that these proceedings appeared to him not only most reprehensible, but most injurious to the views of the parties themselves.

From Lord Cottenham, to whom Sir George Sinclair had also
 35. Lord Cottenham. written, was obtained a more full and detailed view of the question, as it appeared to him. Along with Lord Brougham, he wholly disapproved of the course which the Non-intrusion party were pursuing, and the resistance they were offering to the law; while, at the same time, his lordship would not have the error or faults of the governing majority of the

Church, to stand between the wants and wishes of the people, should they desire an alteration in the law of patronage. Non-intrusion, as set forth by the Church, and admitted without restriction, would, in his view, be in effect election, and the abolition of patronage; and that which Lord Aberdeen's bill proposed to substitute for this, was also, in his opinion, equivalent to the destruction of patronate rights. The change which this measure would effect, that of giving patronage to the Church courts instead of the people, was one that appeared to him most objectionable. He did not think that such a scheme could be acceptable to the people; and, to the credit of the Church, it had been rejected by her. It was, he thought, objectionable in principle, and practically injurious in its consequences. His lordship avowed himself to be no advocate for altering the present system of appointing ministers in the Church of Scotland; but, were a change absolutely necessary, his lordship would give what was taken from the patrons to the people, and not to the Church courts. He had suggested, he said, to Dr Candlish, such an union of contending interests as might bring all parties together, through the medium of a bill allowing the absolute Veto to two-thirds of the communicants, and providing that, when the number of dissentients was smaller, their objections should be dealt with as proposed by Sir George Sinclair; and if such a plan as this could not be agreed to, his lordship saw no peace for the Church of Scotland. He did not see, that peace could be expected from Lord Aberdeen's bill, because the Church and people had declared against it; nor did he see how the Non-intrusionists, consistently with their principles, could have done otherwise. It appeared to him that the Church, in support of her "fundamental principle," was as much bound to protect it against the act of the presbytery, as against the act of the patron; while the proposed bill was, in truth, an intrusion measure, as it proposed to give the presbytery the power of settling a presentee, notwithstanding the dissent of a majority. The Veto would be transferred from the people to the Church courts, who would, no doubt, while they continued of the mind they then were, exercise it for the people: but that mind might alter; and hence the plan might eventually prove as ineffectual in practice as

it was objectionable in principle. He was of opinion that it would greatly impair patronage, which he wished to uphold, without conciliating the Church or satisfying the people; and, in the attempt to reconcile patronage with Non-intrusion, would tend greatly to unsettle both, and to transfer the power, now in contest between the two, to a third party, who did not desire to possess it, and whose exercise of it would be more objectionable than that of either of the others. At the same time Lord Cottenham assured Sir George Sinclair, that he was not prepared to wage war with any plan in which the Church, the patrons, and the people of Scotland might concur. He regarded the great body of the Church and people becoming dissenters, as constituting a danger, to avert which any sacrifice should be made; and he still thought that the plan which he had suggested to Dr Candlish, by amalgamating the principles of the Veto Act and those of Lord Aberdeen's bill, would have produced this happy effect; while he retained the persuasion, that, if acceded to by the Church and people of Scotland, and proposed by Government, parliament would enact it.

Before Sir George Sinclair attempted to enlist the eminent and
36.
Further explanations. influential individuals, to whom he applied to countenance his views, and to contribute, by the declaration of their opinion in their favour, to stay the "agitation" which, on the close of his negotiation, was becoming more widely extended and more alarming, he had learned from Dr Candlish, in very explicit terms, that there must be an end to the *liberum arbitrium*, which he proposed to bestow on presbyteries; and that the Church would not treat on that footing. The reverend gentleman had, by this time, come to an explanation with the Dean of Faculty as to the meaning which he—the Dean—and Lord Aberdeen had put upon the amendment; and the misapprehension which had, on all hands, existed had come out in broad relief;—the Dean and Government understanding by this amendment, that a presbytery might reject a presentee in respect of the reasons or objections, judged of with reference to the circumstances of the parish and the spiritual edification of the congregation—Dr Candlish and the Church understanding it, to give the power of rejection solely and exclusively, if the presbytery saw fit, in respect of the

number and proportion of objectors, or, indeed, of any other circumstances, affecting the prospective usefulness of the presentee, without their judgment having any reference to the validity of the particular reasons urged. After these misunderstandings had been so clearly removed, no good purpose could be served by Sir George Sinclair attempting a settlement, on a basis which the Church must now be under the necessity of opposing. "The whole thing," as Dr Candlish expressed it, "had been a misunderstanding;" and it was time, he added, that the Church should cease from making so great a question, as she was engaged in, a mere strife of words—a captious, verbal squabble, in which a cunning statesman might think to entrap her. There was a greater necessity than ever, he maintained, that she should appeal to the people of Scotland to stand by her in her exertions, to obtain for them the spiritual rights to which they were entitled,—the very agitation which his friend and elder, Sir George Sinclair, had set out with deprecating, and was, most of all, anxious to prevent. Doubtful disputations about a skilfully concocted frame of words, so contrived as if unawares to harmonise parties still diametrically opposite to one another, must be given up. Dr Chalmers and Lord Aberdeen had, he said, tried this game long ago; the Non-intrusion Committee had again been trying it, and with the same success. "If," said this now distinguished leader, in taking leave of Sir George Sinclair, and his ill-fated attempt at healing the dissensions of the Church,—“if the heads of administration are desirous of settling our question in a right way, do not let them try Lord Aberdeen’s game over again. It will prove most fatal. They may think to catch us in some plausible modification of his bill—some phrase of doubtful meaning—or, at least, to entangle some of us in the meshes of some such middle measure. It is wretched policy. It will rend the Church asunder. Either let us alone, or give us what will enable us to go on—*i. e.* the power of rejecting for *dissent alone*.”

It is not unworthy of remark, at this stage of the controversy,

37.
Remarks.

that when the *Secession* at length took place in 1843, and the Non-intrusionists were left to frame a polity of their own, in the admission of ministers, the doctrine of a dissent without reasons by the people came to be superseded,

in the absence of all patronage by the Call, or in other words, by popular election—the dissent being now transferred to the Church courts, with whom it rested to say, whether the Call should be given effect to or not. While within the Establishment, the Non-intrusionists taught, that the people had a right to lay their Veto on any man proposed to them, as their minister, whatever his qualifications might be in the estimation of the Church courts; but now, when separated from it, all the right possessed by the people is just that of the ancient patron—the nomination of the pastor—the substantial privilege of saying, whether the pastoral relation shall be formed between them and the object of their choice, being in the hands of the Church courts. Within the Establishment, the civil courts may come in, and protect the nominators in their right; but in the Free Church the ecclesiastical courts are absolute and uncontrollable in disposing of them.

The well-meant, though somewhat over-chivalrous endeavours
33.
Close of these
negotiations. of Sir George Sinclair, to heal the dissensions that
 had broken out in the Scottish Church, had, in this manner, been signally defeated; and, so far from having succeeded in allaying the agitation, which he so much deprecated, the worthy baronet had only contributed, by his well-meant exertions, to increase the flame which he was so desirous to allay. The measure submitted by him to the Non-intrusion Committee and her Majesty's government, was found, when it came at length to be fully understood, more calculated to accelerate than to retard the catastrophe which it was its object to avert—except, indeed, with those who were prepared to renounce the principles by which they had by this time solemnly pledged themselves to abide: while the calculations of the more wary Dean of Faculty, that the number of such as would be caught in the meshes of the middle measure would be considerable enough to turn the scale within the General Assembly, were grievously disappointed. The Sinclair-interlude, such as it was, had not, however, been without its value. It had at least borne a testimony to consistency of principle the most honourable, by displaying the perplexities and embarrassments that accompany any attempt to render it subservient to the views of a selfish and temporising expediency; and, in the firm and honourable conduct of

the Strathbogie ministers, under circumstances the most trying to their integrity, it gave assurance that, in the end, law and good order would triumph in the Church of Scotland, to the discomfiture alike of ambitious ecclesiastics, and selfish and time-serving politicians.

The very singular position in which all these proceedings placed
 39. the Non-intrusionists, when viewed along with the
 Singular position. grounds taken up by the seceders of 1843, ought not here to be overlooked. The justification of the *Secession*, as set forth in the protest of that year, rested on the allegation, that the Church was unable to obtain a statute declaratory, that, as the law has existed from the Revolution downwards, she is at liberty to adopt her rule of procedure according to her convictions of duty, as they may at any time arise; and that without being under the control, or requiring to obtain the concurrence of the State. This the civil tribunals had prohibited her from doing, in the matter of the Veto Act; and had found, that not only would she forfeit her endowments by such procedure, but would subject herself to actions of civil damages to the parties aggrieved by it. With this view of the law by the civil courts the State had refused to interfere, as constitutionally it might have done; and had, consequently, so far declared, both that the Church courts of Scotland possessed by law no such rights as they were claiming, and ought not to be clothed in them: and in this consisted the invasion of the Church's spiritual independence, of which complaint was made—or, in the stronger language not unfrequently employed—the trampling on the Crown-rights of the Redeemer! Yet the great value of the now proposed measure of peace and settlement, whether as explained by Dr Candlish or by the Dean of Faculty, consisted in this, that the Church should, in all time coming, be tied down from adopting any rule inconsistent with, or opposed to that for which the sanction of parliament was sought;—in other words, that her spiritual independence, as afterwards and ultimately set forth in the Protest at the Secession, should be surrendered!

The Non-intrusion Committee, as if feeling it difficult to explain
 40. why a measure, which was good in October, should
 Further communi- change its character, and become pernicious in
 cations with Government. February; and evidently anxious to prepare her

Majesty's government for what must have been regarded as a change of views, on the part of the Church, from those submitted by the Dean and Sir George Sinclair, addressed a memorandum to the home Secretary of State, through the deputation still in London. In this memorandum, the Committee detailed the circumstances under which they had ever come to entertain the proposal of settling differences on the basis of Sir George Sinclair's modification of Lord Aberdeen's bill. They again set forth, what they seemed at all times most anxious to express, that the proposal did not proceed from the Church; and had obtained from the Committee a reluctant acquiescence, as falling very far short of her views and wishes. They had all along, they said, stated to Sir James Graham, that if the peace of the Church was to be settled, fully and finally, it must be by the adoption of one or other of those measures, of which the Church thoroughly approved; and now that they were released from the position into which Sir George Sinclair's negotiations had brought them, by government having been unable to do anything, even in regard to his modified measure, during the session of parliament that had just expired, they intimated their re-occupation of the ground approved of by the General Assembly 1840, and the resolution of the Church not to take the responsibility of originating, or recommending as her own, the measure that had been recently suggested. To follow any other course would, they felt, be to subject themselves to the charge of seeking ecclesiastical power; and they, therefore, again earnestly urged upon government, to take into their favourable consideration the other methods that had been referred to—the basis of the positive Call, or the Veto of the Duke of Argyle's bill.

By this time her Majesty's ministers had been made acquainted, through the Moderate and Constitutional Deputation, in a "Statement" submitted to them, that this section of the Church, both numerous and influential, agreed so far with the Non-intrusionists, as to regard the *liberum arbitrium*, which Sir George Sinclair had proposed to bestow upon the ecclesiastical courts, as of all modes of settlement the most to be deprecated and avoided;—this party distinctly declaring, that they would prefer to it either the Veto itself, or popular election of ministers.

41.
Statement of the
Moderate party's
views.

And the Non-intrusion Committee failed not to urge this fact on Sir James Graham, as an additional reason for adopting the downright course of the Call or the Veto—believing, as they said they did, that both of the great sections of the Church would prefer a general fixed rule of procedure, to the judicial discretion, in each particular case, which the modified measure had pointed out.

To this memorandum Sir James Graham replied briefly, that, ^{42.} the condition of immediate legislation having become
 Reply of Govern- impossible, he saw no advantage in discussing a
 ment. proposition from which the assent of the General Assembly had been withdrawn; and thus, as we have seen, terminated the well-intended and patriotic endeavours of Sir George Sinclair, to obtain a settlement of the Scottish Church question, through a modified amendment of Lord Aberdeen's bill. We have already said, that this attempt was not without its advantages; and it is due to the worthy baronet, to notice in this place that, when at length a bill was passed in parliament to remove doubts in the settlement of ministers of the Church of Scotland, many of the suggestions now repudiated found a place. Had the very important misapprehension, already noticed, and which had all along prevailed between the majority of the Non-intrusion Committee and the Dean of Faculty, as representing the government in this transaction, been more early discovered than it was, it must have precluded the hope expressed by the Committee, that the negotiations, which had been going on, had produced such a favourable impression on the minds of her Majesty's ministers, as must have tended to correct erroneous notions, previously entertained, in regard to the motives that had influenced the Church; and must have also shown, that, had not the obstacle of delay, in obtaining the introduction of the bill, occurred, the result of the negotiation must have been the same as it was. To guard, as much as possible, against the recurrence of similar obstacles, should negotiations be resumed, the Non-intrusion Committee resolved to present to her Majesty's government a respectful Memorial, containing a clear and full explanation of the principles of Non-intrusion, as now held by the Church; a representation of the impossibility of the Church submitting to any measure which did not fully carry out her views, without the power

of the civil courts to interfere ; and her desire that the government should distinctly intimate their willingness to consent, that these views should be recognised and sanctioned, in any civil statute to be passed for settling the affairs of the Church. This statement or memorial was transmitted to the members of government on or about the 13th December 1841.

43. Having so far, as we have now seen, closed their negotiations with her Majesty's government, through the medium of Sir George Sinclair and the Dean of Faculty, the Non-intrusion Committee presented a report of what had been done by them, since the rising of the Assembly, to the Commission which met on the 17th November 1841. This report contained a detail of the proceedings already noticed, and the Committee's view of the principles and limitations on which they had conducted the negotiations. It was approved of by the Commission ; and a copy was directed to be transmitted to Sir James Graham, setting forth the steps which the Committee had taken, as they arose out of the occurrences in which they had been engaged, and the communications into which they had been led by " certain influential individuals," who had stepped forward to attempt a settlement of the Church question. These " influential individuals " were not named in the report ; but it was with no little surprise that the Moderate members of the Commission came to learn, that the Dean of Faculty was one of them. The learned gentleman—by this time the Lord Justice-Clerk of Scotland—was immediately waited upon by a deputation from the Moderate and Constitutional Committee, requesting such information, as he might feel himself enabled to give, so far as the negotiations, which had been going on, regarded the Strathbogie brethren, and those who had supported them. An alarm was justly and naturally felt by the Moderate committee, that government had almost consented to introduce a measure for the settlement of the Church, which, while it provided for the principle of Non-intrusion, was ready so far to recognise the spiritual independence of the Church, as to leave these ministers to be dealt with as the Church might see fit, and consequently did not meet, in any manner that could be satisfactory, the greatest difficulties in which she was involved, and in which, in particular,

Report to the November Commission, 1841.

those clergymen were placed who had obeyed the law, as pronounced by the civil court, and such of their brethren as had supported and countenanced them in the course. They could not, however, believe that his lordship could have been a party to such a measure, who had himself so much contributed to place the Strathbogie ministers and the Moderate party in the position in which they were. Nor could they forget the repeated assurances, which they had received from high quarters, that the ministers who had been suspended and deposed would be protected, and their restoration to their places in the Church provided for, before any act of parliament was passed. The deputation were gratified at receiving from the Lord Justice-Clerk an assurance, through one of their number, that from this pledge of protection her Majesty's government had never evinced the least intention to depart. On the contrary, the proposed settlement rested, first and foremost, on the basis of restoring the ministers, who had been ecclesiastically punished for obeying the law; and so far had this been provided for, that one of the most eminent Non-intrusion leaders was to propose, and another to second, their reponement in the Church. This statement to the member of Committee, who waited on the Lord Justice-Clerk, corresponded exactly with what had been intimated to the ministers of Strathbogie when Sir George Sinclair was on his way to London to obtain the anticipated settlement of the Church question. From these assurances, it became more and more clear, that, had no delay occurred in bringing in Lord Aberdeen's bill, as amended by Sir George Sinclair, there lay behind many far more important points than that of Non-intrusion to be adjusted, before it could pass into a law.

Soon after the Commission of November 1841 rose, a conference
 44. took place between the Non-intrusion Committee and
 Conference with her Majesty's Solicitor-General for Scotland, Mr D.
 the Solicitor-General. McNeill, to whom Mr Hope, on ascending the bench,
 had handed over the management of the Scottish Church question. This conference was requested by the Committee; and the Solicitor-General, when it took place, began by stating, that he had no authority whatever to pledge the government to any measure, but was ready to hear any proposal or explanation from the gentlemen

present. It was then explained by Dr Candlish, that the Committee did not oppose reasons being required on the part of objectors against a presentee, and that the Church would even submit to such a provision as should render this imperative, provided she should have absolute power to reject, on the specific ground of the continued unwillingness of the people to receive. He further explained his view of the *liberum arbitrium* to be, that, under it, everything could be done that was then done under the Veto law; but that the Church courts would have the power to do otherwise if they saw proper. It was further explained by Dr Gordon, that if reasons were stated, and these either abandoned or removed, while yet the unwillingness to receive the presentee remained, the presbytery should then have power to refuse to settle. It was not proposed, therefore, to render it imperative, in these circumstances, to reject the presentee, and, in this manner, to place the Christian rights of the people beyond the discretion of the Church courts; but the Committee were willing to concur in such a modification of the views once held on this subject, as clearly implied a desertion of the high popular ground which they once occupied. Such an arrangement, therefore, as was now regarded as satisfactory, while it might have, in effect, secured a veto to the people in the election of their minister, while the existing party in the Church preserved the ascendant, afforded no security that, under the counsels of their opponents, should they ever regain their old rule, the same respect would be paid to the popular will.

It was at this particular stage of proceedings that the diversity
 45. of opinion, which the appearance of Sir George
 Differences in the Non-intrusion Sinclair in the field had, after all, created, first
 Committee. displayed itself in the Non-intrusion committee. Dr
 Simpson, of Kirknewton, a member of this committee, did not go
 along with Dr Candlish and the majority, in holding that the Church
 ought rather to reject all legislation whatever, than submit to any-
 thing short of the *liberum arbitrium*, as now explained by them.
 He was willing to accept an act of parliament, which might compel
 the Church courts, acting conscientiously, to pronounce the objec-
 tions offered to be worthless in themselves, but which still left them
 at liberty to reject, on the ground that these worthless objections

were persisted in by the parishioners;—a view of the subject which, within the Non-intrusion committee, found but two other members to support it, but, beyond it, contrived to muster a somewhat larger number. Such had, by this time, become the vague and undefined notion, attached by the members of the committee itself, to the various suggestions coming under its notice, that the view taken at the conference with the Solicitor-General, by Dr Simpson and others, of the clause which had formed the basis of the negotiation with government, was afterwards represented by Dr Candlish as a new interpretation, and one which had not occurred to him, or to any of the committee. This charge of a departure from the opinions which they had hitherto entertained, the minority in the committee very successfully threw off; and very clearly showed that, before the conference with the Solicitor-General, the committee had evinced a strong inclination to get quit of the negotiations in which Sir George Sinclair and his amendment had involved them; finding it, no doubt, a far from easy matter to reconcile the clause proposed to be introduced into Lord Aberdeen's bill, even as this clause was amended by themselves, with the principle of Non-intrusion, to which the Church stood pledged. In point of fact, the change of opinion and interpretation lay with Dr Candlish and his friends; and the ground of difference, which had arisen within the committee, was artfully laid hold of to enable them to get back to that which they had occupied before Sir George Sinclair was in the field;—a ground somewhat more feasible than the circumstance of the condition of immediate legislation not being complied with.

At the conference with the Solicitor-General, where this division

^{46.}
Views taken of the
Strathbogie case. in the Non-intrusion committee first displayed itself, it was stated, and unanimously assented to by the deputation, that the cases of the Strathbogie ministers, and of the presentees to Marnoch, Auchterarder, Lethendy, &c., affected by recent proceedings of the Church courts, must be kept entirely separate from the settlement of the Non-intrusion question; and it was intimated, at the same time, to the Solicitor-General, that these cases, or their ultimate disposal, had never been under the consideration of the Non-intrusion committee. They could not, consequently,

have formed any element in the communications which they had held with her Majesty's government ;—a view of matters, which it was not very easy to reconcile with what Sir George Sinclair and the Dean of Faculty had communicated to the Strathbogie ministers.

In all these negotiations between government and the Non-^{47.} intrusion committee, it seemed almost altogether Moderate party overlooked. forgotten by the former, that such a body existed as the Moderate and Constitutional party of the Church, and that many—if not, indeed, all of this party—had placed themselves in the same situation as the Strathbogie ministers, and by their votes and dissents, and by assisting these ministers in their pulpits, had subjected themselves to the highest censures of the Church, under the views now taken by her of her rights and duties as the Establishment. It could not have been unknown to her Majesty's ministers, that the August Commission of the same Assembly which had deposed the Strathbogie clergymen, had directed that six of the clergymen, who had, notwithstanding, sympathised with and assisted them, should be brought to discipline in their several presbyteries. It was, indeed, understood that several of the cabinet ministers were in private and confidential correspondence with leading members of this party ; but no authority was given to them to communicate to the Moderate committee the transactions that were then going on, through the medium of Sir George Sinclair and the Dean of Faculty, between the government and the Non-intrusion committee. It was clear, however, that, until the sentence pronounced by the Assembly against the Strathbogie ministers was declared null and void *ab initio*, nothing was in prospect before the Church but fresh troubles, arising out of this unprovided-for element, even if the point of Non-intrusion had been satisfactorily adjusted by a bill in which the Church could agree ; and it certainly appeared to be taking a very narrow, and not a very honest view of the question, that had arisen and had to be settled, to confine themselves, as parties appear at this time to have done, to the mere point of the future filling up of vacant parishes.

Upon the appearance of the " Memorial " and " Statement " ^{48.} which the Non-intrusion committee at this time Steps taken by the Moderates. transmitted to government, the Moderate and Con-

stitutional committee found it high time to bestir themselves. Let a bill pass, giving to the Church, as then constituted, the claims put forward in this "Memorial," and no prospect was presented to the Moderate clergy, but deposition from the ministry, or the most unqualified confession of error, and of penitence the most humiliating, for the disrespect with which they had treated the sentences of the Church. The committee accordingly lost no time in addressing *their* "Memorial" to Sir Robert Peel, and the other members of her Majesty's government; in which they spoke out with equal clearness and straightforwardness. In these respects the tone and language of the "Moderate Memorial," as compared with those of the Non-intrusion manifestoes, afforded a very striking contrast. No room was left in the former for controversy, as to doubtful meanings and differently understood concessions—a feature, which had run through alike the correspondence between Lord Aberdeen and Dr Chalmers, and the negotiations with Sir George Sinclair and the Dean of Faculty. The spiritual independence now sought by the Church was broadly stigmatised by the Moderates, as inconsistent with the principles of social order; and they represented it as now advanced by the Church of Scotland for the first time since the Reformation. The system of patronage, as restored by the act of Queen Anne 1711, and as checked alone by the presbytery's judgment, after due trial and examination into the qualifications and fitness of the presentee, they regarded as clearly expressed, and definitely settled in the statutes of the land; as consistent with religious liberty; and likely to be productive of permanently beneficial effects. These, as maintained in the Memorial, were the leading doctrines and principles of the party in the Church called the "Moderate;" and so called in opposition to those who demanded an extension of popular influence—the exercise, in some shape or another, of a privilege of approval on the part of the congregation. This party, called the Popular or Evangelical, had long kept up, through the Call, and the process of a "translation," or "transportation" from one living to another, an appearance of accomplishing what, by every practical man, was clearly seen to be impossible—the rendering consistent a right of rejection on the part of the people, with the right of selection on the part of the

patron. But, for a long period previous to the revival of the controversy in 1834, the Call had become a mere form. Under the government of the Church, as administered on these the principles of the Moderate party, Scotland had attained a high place in the scale of nations; and the House of Commons, in 1834, had borne its testimony that, for this place, Scotland was chiefly indebted to the wisdom, with which its internal institutions had been adapted to the habits and interests of the people. These were some of the facts brought by the "Moderate Memorial" under the notice of her Majesty's government; and it might have been added that, under the same Moderate regime, the Church of Scotland had called forth the energies of her members in the propagation of Christianity among heathen nations, and in the maintenance of its knowledge and spirit among her own expatriated countrymen in the British colonies; and the Colonial Church and India Mission Schemes had been the fruits of this truly commendable zeal. The memorialists reminded Sir Robert Peel, that the innovations made on the constitution of the Church, by the Veto law of 1834, had been viewed by the Moderate party, as an entire and experimental abrogation of that ecclesiastical system, under which Scotland had, during past ages, secured the admiration and respect of all intelligent observers; and they had entered dissents against it, to which they had uniformly and consistently adhered. When, therefore, her Majesty's government and the legislature were called upon, as they now were, to give their sanction to these innovations, the Moderate party felt, that they had a duty to perform;—that of withstanding such a proposition by all the constitutional means within their power; and in this attitude of resistance they now more distinctly placed themselves. In the cases that had arisen under the Veto Act, and within the Church herself, they had, as they reminded Sir Robert Peel, displayed all respect to the ecclesiastical authorities, and assisted in carrying out these acts, against which they had found it their duty to protest when adopted by the Church. They had also concurred in the appeal to the House of Lords against the judgment of the Court of Session, finding the Veto law to have been *ultra vires* of the Church, and consequently *ab initio* null and void;—not that they entertained any doubt as to

the soundness of that deliverance, but because they were desirous of obtaining the judgment of the court of last resort, that the question might be set at rest for ever. It was only when the judgment below was affirmed by the court above, that the Moderate party, true to the principles which they had all along held, called for obedience by the Church to the law thus authoritatively declared; and urged upon her to fall back upon the mode of settling ministers, which had existed before 1834, and to the good fruits of which so many testimonies had been borne. The determination of the General Assembly 1839 to maintain and enforce the Veto Act, notwithstanding the judgment of the House of Lords, rendered the gulf between the two parties in the Church no longer passable by either. They had ceased to differ on mere speculative points and doctrines; and practical grounds, of the most manifest and deepest importance, were henceforth to arise. The Strathbogie case had called these forth in all their prominence; and while the Non-intrusion majority were deposing the ministers of that presbytery, the Moderates were not only justifying, but declaring that they must, in the same circumstances, follow the same course, which had brought down these censures on the Strathbogie brethren. The resolution to stand in this manner by the deposed ministers had not been rashly taken. To have deserted men in their hour of trial, with whom they had gone hand in hand, in defending and upholding the principles for which they suffered, would have been pusillanimous and short-sighted; and they frankly stated to government, that a regard to their own safety, not less than to their honour and consistency, demanded of them to adopt the course which they were now following. Before they addressed her Majesty's government as they now did, the war had, in fact, come to their own doors. The August Commission of 1841 had adopted a resolution to deal with a certain number of ministers, who had held communion with the Strathbogie clergymen since their deposition by the Church, and six had been, by this time, selected to undergo ecclesiastical discipline, on this account, in their several presbyteries. It had, indeed, been gravely pointed out, in some of the publications of the Non-intrusion party, that the majority of the Assembly would be guilty of a gross and glaring dereliction of duty, if they did not proceed

to the "excommunication" of the whole of the Moderate clergy ! Against the proceedings of the August Commission, the Moderate brethren present had entered dissents ; reiterating their determination still to hold the seven ministers of Strathbogie, as if no sentence of deposition had ever passed upon them ; and to regard any attempt to punish such as did so respect and treat these ministers, as a perseverance, on the part of the Church, in that defiance of the civil power, which at once had impaired her usefulness, and now threatened her destruction. They also had dissented from these proceedings, as putting an end to all hopes of any means of reconciliation or adjustment proving effectual, and as eventually imposing on the dissentients the necessity of applying to competent authority, to know whether they who obeyed the law, or the party who persisted in resisting it, were to be held and esteemed "The Established Church of Scotland." In the memorial now presented to government, and in which all these matters were set forth, the Moderates justified themselves from the charge, to which this dissent gave rise, that they were separatists and schismatics ;—a charge which, it must be allowed, from the eagerness displayed in attempting to fix it upon them, appeared as if felt to be really due to the parties bringing it forward. Such a charge was manifestly misplaced against ministers and elders who, for seven years, since the passing of the Veto Act, had employed every argument, and offered every concession compatible with principle, in order to arrest the coming storm. Nor, it may be noticed in this place, was the dissent entered against the deliverance of the Commission of August 1841 any way stronger, or different in principle or effect, from that which had been taken by the Moderates in the Assembly 1839, when it was openly declared by the leaders of the Non-intrusion party, that a great schism had, from that day forward, occurred in the Church of Scotland. The preservation, not the dismemberment of the Church, had been the great object which the Moderate party had proved themselves all along to have in view ; and greater injustice had not been done by the *Protesters* in 1654 to the *Resolutioners* of that period, than was now attempted to be perpetrated by the Non-intrusionists against their Moderate brethren. It was, in truth, the same principles that were again in antagonistic position, and preserv-

ing, as in the olden time, the same relative place towards one another. The extravagancies of 1654 were now, indeed, subdued into the demand for the Church of nothing more than a jurisdiction co-ordinate with that of the civil courts; and this demand the Moderate memorialists treated, without disguise, as utterly absurd, and held it to be one involving the *imperium in imperio*, with all its consequences. They maintained that, under the British constitution, the statutes of the realm could not admit of different and opposite constructions, as different courts might please to determine. They were ready to allow, that review of the ecclesiastical sentence by the civil tribunals might be excluded; but whether the ecclesiastical were or were not within their statutory duties, was a question which, constitutionally, must be brought before a tribunal, one and indivisible; and that tribunal was the civil court. The right of the spiritual courts, contended for by their opponents, to taboo, as ecclesiastical, whatever they pleased, and thus to drag it from under all civil jurisdiction, they distinctly denied; and on this, in fact, hinged, by this time, the whole of the controversy between the two parties in the Church. The spiritual-independence party pronounced the forming of the pastoral relation between a minister and his flock, to be a spiritual or ecclesiastical matter; and, consequently, in all its shapes and stages, under the jurisdiction of the Church alone. The Moderate party held it—so far as the obligation lay on presbyteries to take on trials the presentee of the legal patron, and to receive and admit—to be a civil matter, and, of course, within the jurisdiction of the civil courts. The one held it to be beyond the power of the Court of Session to declare the matter of settlement of a minister a civil matter; and the other held it to be beyond the reach of the General Assembly to treat it as a spiritual. The slightest attention to the grounds of contest must show, that the Church courts did not so much claim a co-ordinate as a controlling jurisdiction over the civil, as, at their own pleasure, they sought to take to themselves whatever they saw fit; and to strip the civil tribunals of all title to inquire whether they acted legally or not. Such an independent spiritual jurisdiction, as rest it must upon something, could clearly find no other foundation than a *jus divinum*; and it did appear passing strange, that a “Claim of

Right" which the Presbyterian Convention, that prepared the Confession of Faith refused to sanction, should be presented, at the distance of two hundred years, to a British Parliament. Yet was it pertinently asked, in the Moderate memorial, at this time presented to government, how the Church, without such a *jure divino* charter, could substantiate the claim she had put up, of increasing or diminishing, at her pleasure, the number of judges in the ecclesiastical courts, in the face of statutes intrusting to the civil tribunals alone the right of joining or disjoining parishes within the Establishment?

It was now manifest that, by the time the Moderate Committee^{49.} addressed their "Memorial" to her Majesty's government, their opponents had been driven to admit, that the principle of Non-intrusion, on which they laid so much stress, as "fundamental" in the Church of Scotland, was neither more nor less than the right of arbitrary rejection by the people, without reasons assigned or judged of by the presbytery; and that the spiritual independence of the Church was an exemption from all statutory obligations; or, what amounted to the same thing, a power of dispensing with any laws, which she should regard as trenching on her spiritual province, even should these laws be statutes which she had herself demanded should be passed! This confined the controversy, at length, within narrow and easily understood limits; and compelled the Non-intrusionists to attempt what appeared no very easy task—namely, to reconcile such a right, as was claimed by the Church, with the provisions of the statutes binding and astringing presbyteries to receive and admit the qualified presentee of the patron; or at once to allow such an attempt to be preposterous, and to seek the repeal of these statutes. While some of the Non-intrusionists advised the latter, as both the easier and the more consistent course, nothing less than a legislative acknowledgment of a principle, destructive as much of the law and constitution, as it was repudiated by common sense, would satisfy the majority. In regard to the form of carrying out this principle, they were comparatively indifferent; but any measure not distinctly embodying it, would, they said, accelerate the ruin of the Church! Acceptableness to the people was one mode

^{49.}
Principles brought
out.

of stating the "fundamental principle" employed by the Non-intrusionists: suitability for the particular charge, to be judged of by the presbytery, was the ground occupied in this contest by the Moderate party, and the practical meaning in which they understood this principle. The Moderate party stated in their Memorial, that if any doubts really existed, as to the qualifications rendering a person suitable, they might be removed by the legislature. It was clear, at all events, according to them, that existing statutes excluded *acceptableness*, as a qualification to be ascertained by the arbitrary assent or dissent of the people, and included *suitableness*, as one to be ascertained by the act of the presbytery; and to a declaratory statute, more clearly fixing these principles, the Moderates offered no objection. It did not appear, that they thought such an enactment necessary, after the light which the decisions of the civil courts had thrown upon the subject; much less that they invited it from the legislature, of whose interference they seemed to have all along had very great jealousy;—manifesting, on this occasion, a greater regard to the real spiritual independence of the Church, than their friends on the other side were displaying. They only agreed to what they were not without fears might endanger the whole ecclesiastical fabric, under the hope of thereby preserving the peace of the Church, and averting the schism, that had now become so threatening. They had no hesitation, however, in giving as their opinion to her Majesty's government, that if any act were passed to remove doubts, care should be taken for enforcing, in a more effectual and summary manner, the rights of patrons, presentees, and presbyteries; and insuring a more ready obedience than had lately been shown—on the part of those for whose guidance and restraint the law is made.

But while opposed to the principle of Non-intrusion, as synonymous with an arbitrary dissent by the people, the Moderate manifesto set forth the sentiments entertained by the party, in regard to the mode of settlement, which had been so frequently referred to, that of the *liberum arbitrium* of the Church courts, as embodied, according to not a few, in the proposed amendment of Sir George Sinclair, and adjusted, and at one time agreed to, by the Non-intrusion commit-

50.

Moderate views of
the *liberum arbitrium*.

tee, before that reverend body had their eyes fully opened to its import. "Of all modes," said the Moderates, in their memorial to Sir Robert Peel, "yet proposed for giving effect to the principle, the most impolitic and the most mischievous is that which concedes to the Church the exercise of what is called the *liberum arbitrium*—a discretionary and irresponsible power to determine, not judicially, nor according to any ascertained rule, but arbitrarily in every case, as to the amount and character of the popular feeling existing against a presentee, and the weight that is to be given to it." Such a measure appeared to the memorialists to be dangerous alike to civil and religious liberty; and they felt sure, that, so far from securing the concurrence and approval of the people of Scotland, it would be reprobated by all candid and unprejudiced men, as a power liable to be unequally and oppressively exercised, without the possibility of redress, and as eminently calculated to render the Church an object of jealousy and suspicion. The memorialists rested their approval of the present law on experience of its adaptation to the reasonable demands of all parties interested in the collation of ministers, and its congruity to the constitution of a presbyterian Church. Their opposition to a system of a more popular character, was founded not only on theory, but also on the experience which their forefathers had of the practical working of such a system. "But of all the lessons taught by experience, none, they said, was so instructive or so important as this—that irresponsible power in the hands of churchmen becomes inevitably an instrument of the greatest and most degrading tyranny." The memorialists, therefore, had no hesitation in saying that, rather than see such a power, as they understood to be signified by the phrase *liberum arbitrium*, conferred on the Church courts, they would submit to any mode of appointing ministers, however democratic in its character and tendency—provided only the rights and duties of the Church and of the people were clearly and distinctly defined, and rendered capable of being enforced.

The "Memorial of the Moderate and Constitutional Committee,"
 distinguished, as it was, by the plainness with which
 51. Demands of the memorialists, it spoke to her Majesty's government, concluded
 with demanding, in the name of common justice, that before any

measure of settlement whatever was sanctioned by parliament, the Church should submit to the law, as regarded the past ; should no longer defy the supreme civil court, and defeat or resist legal rights ;—a preliminary condition, which, it is remarkable, had never been noticed in all the negotiations carried on between the Non-intrusion Committee and her Majesty's ministers : except so far as the Committee having given to the Solicitor-general of Scotland an assurance, that it had never found a place in these negotiations ; but which, it may be presumed, had on the other hand appeared so plain and necessary to her Majesty's government, as to have been taken for a matter conceded and agreed to by all the parties concerned in them.

Now that the memorials and manifestoes of both parties in the Church were before the world, the question could not fail to occur to every candid and impartial person—May we not in all this have a very notable example how nearly men may, in reality, be together in mind and sentiment, while acting towards each other as if they were wide as the poles asunder ? And how easily might controversies of this kind be settled, if anything like candour and temperate consideration were given to them ! By the very concessions, again and again made by the Non-intrusionists during these negotiations, and by the simple act of seeking the aid of the legislature at all, in fixing the mode or terms of taking presentees on trials, for collation to the cure and benefice, to which they might be nominated, they admitted that this step or stage, in the formation of the pastoral relationship, was a civil matter ; and so far they agreed with the Moderates. In the matter of admission to the cure of souls, and the qualifications entitling to this admission, the Moderates never allowed the Court of Session to have any direct jurisdiction. In this step and stage of the process, they held the formation of the pastoral relationship to be so far an ecclesiastical matter, that the statute had removed it from the control of the civil authority ; and herein they agreed with the Non-intrusionists. In that stage of a settlement, with which the Veto law of 1834 had to do, the Moderates contended that the Church courts acted merely ministerially, being bound by the civil statute to do a certain duty, under certain given

52.
Approximation in
principles.

circumstances ;—that duty being to take on trials the presentee of the legal patron ; and that the question—Whether they should discharge this duty or not ?—the law of the land did not permit the Church to hand over to the people, as the Veto Act had done. All this was, in fact, conceded by the Non-intrusionists, after judgment had been given in the House of Lords against the Church. The Church, in the Auchterarder case, by expressing her liability to pay the penalty of the broken law, acknowledged that she had committed the statutory wrong. In the subsequent stage of settlement—that of examination and admission—the Moderates let in the people to object on any ground they might see fit ; and then they assigned to the Church courts a judicial duty, with the discharge of which the civil were prohibited, by express statute, from interfering. This “ power ecclesiastical,” under the statute 1567, might by some be called a *liberum arbitrium* ; but in so far as the judgment was necessarily to rest on the value put by the presbytery on the objections—acting, as they now did, on soul and conscience—the terms *liberum judicium* were certainly more appropriate. It was clear, therefore, that the Non-intrusion principle, as meaning that no minister shall be settled in a parish contrary to the mere will or desire of the people, had, at this time, been substantially surrendered ; for, in all the negotiations which the Non-intrusion Committee had been carrying on, they had placed themselves in a position, the honesty of which could only be maintained by giving up the demand, that, in the matter of examination and admission, presbyteries should be entitled to exercise the *liberum judicium* ! To claim, as they did, for the Church the *liberum arbitrium*, as distinguished from the *liberum judicium*, at this stage of the proceedings, was just to get back, in another form, upon the ground declared illegal—that of determining for herself, whether she would or would not discharge a statutory duty, in which she acted merely ministerially.

CHAPTER VII

CULSALMOND CASE—PROCEEDINGS IN THE CIVIL AND ECCLESIASTICAL COURTS.

WHILE difficulties and dangers were gathering around the Church, in consequence of the position in which she had placed herself towards the civil tribunals, by the passing of the Veto law, and the admission of the ministers of *Quoad Sacra* Churches to her judicatories, a new case arose within the presbytery of Garioch, and synod of Aberdeen, involving other and separate points connected with her alleged spiritual independence. The patron of Calsalmond, in the exercise of his undoubted right, had presented a gentleman of the name of Middleton, as assistant and successor to the minister of that parish; and, upon this presentation being laid before the presbytery, a question had been raised—how far the preliminary step, towards following out the settlement according to the Veto law, should be adopted? This step consisted, in the present case, in making up a roll of the male heads of families in communion with the Church, and resident within the parish. The majority of the presbytery of Garioch held, that they were bound to proceed in receiving and admitting Mr Middleton, whatever might be the result of calling for dissents from his settlement under the Veto law. But, apparently in the belief—unfounded, as it proved—that no dissents, sufficient to reject him under that act, would be offered; and holding, that although they yielded to the minority of their number, in thus far following out its provision, they were not committed to do anything amounting to a violation of the law of the land, they did not oppose the making up of the roll;—while the presentee and patron took care to protest against this compliance

with the Veto Act. By this mode of procedure, considerable perplexity was thrown around the steps afterwards taken, in both the civil and ecclesiastical courts; while, no doubt, the great points involved in it came out with sufficient clearness as the case proceeded. The Call was moderated after the usual form, and was very respectably signed by resident and non-resident heritors, elders, and others. But when dissents were called for, under the Veto, there appeared a majority of male heads of families, being communicants, dissenting—and consequently establishing a case in which, under the law of the Church, the presbytery was bound to reject the presentee. This was precisely the point at which the majority had fixed that the ultimate course of proceedings must be decided; and in consistency with the view which they entertained of their duty, as declared by the civil tribunals, it was moved, that the presbytery, disregarding all that had been done under the Veto Act, should sustain the Call, and resolve to proceed to the settlement, according to the laws of the Church. It was also moved and seconded, as craved by the dissentient parishioners, that the presbytery should sist procedure, and refer the case to the General Assembly. Before the vote was taken on these motions, and when in point of order parties were removed, and out of court, the agent for the dissentient parishioners craved leave to be heard; intimating that he had special objections to offer against the presentee. This was refused by the presbytery, on the ground, that if these special objections were regarded, as offered under the Veto Act, they were incompetent; and that, if brought forward under the general law of the Church, they could not be received at the stage of proceedings at which the court had arrived: and the vote being taken, it was resolved, on a division of seven to five, to proceed with the settlement. Appeals and complaints were in common form taken against this deliverance; and the agent for the dissenting parishioners gave in a notarial protest, setting forth that the presbytery were bound, by the laws of the Church, to have rejected the presentee; and that, at all events, it was their duty to have received the special objections which, irrespective of the Veto law, the dissentients were ready to offer and substantiate; and which special objections were marked and set out in the protest.

When the parishioners of Culsalmond took a notarial protest

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| 1.
Remarks. | against the proceedings of the presbytery of Garioch, they committed the very offence for which |
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Mr Young, the presentee to Auchterarder, had been called to the bar of the General Assembly; and as this protest was, in effect, an appeal from the ecclesiastical to the civil tribunals, they were guilty of the crime for which presentees were now being deprived of their licenses to preach the gospel, and ministers deposed from their holy offices! The celebrated Declaration of Spiritual Independence of 1838, applied alike to members as to ministers and elders of the Church; and was, doubtless, outraged in the steps now taken by the parishioners of Culsalmond. That the Church should have applauded in them what in others she so severely condemned and punished, as an insult to her spiritual authority, was just another of those singular inconsistencies, into which she was daily falling, from the position towards the civil courts which she had so rashly and blindly taken up.

In these circumstances, the Presbytery appointed one of their

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| 2.
Edict served. | number to preach in the parish church of Culsalmond, and to intimate to the congregation that, on a future |
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day, then to be named, the presbytery were to meet for the induction of Mr Middleton; and citing all who had interest to appear on that day, and if they had any objections to his collation, then and there to state the same. No appeal or complaint, by either party, or members of court, was taken against this deliverance. The edict of induction was accordingly served, and was duly returned; when, no parties appearing as objectors to Mr Middleton's settlement, he was accordingly admitted to the benefice and cure, as assistant and successor to the still living incumbent;—ordination not being required in this case, as the presentee was already, and had been for many years, in holy orders. This, however, was not accomplished without a violent uproar and breach of the peace. A very general belief prevailed, over that part of the country where Culsalmond is situated, that the scene, which had some time before been acted at Marnoch, was about to be repeated at Culsalmond; and as the people had, by this time, been well instructed, that the induction of a minister was a spiritual matter, with which

the civil magistrate had nothing to do, it was easy to persuade them that, in maintaining their spiritual rights by resisting this induction, they could not come legally within the reach of his authority. The presbytery, apprehending disturbances, had obtained the presence of the Sheriff of the county, with several Justices of Peace, and a small body of constables. Any attempt, however, by these authorities, to protect the presbytery in the discharge of their duty, was unavailing. They were assailed by the mob on their way from the manse to the church; the rabble took possession of the church, and even of the pulpit itself, indulging in the most outrageous conduct, and the most offensive and impious language, and altogether preventing the service from being proceeded with. The presbytery had, accordingly, to return to the manse, where the service was at length gone through in common form, and Mr Middleton inducted. Nor had the tumult altogether subsided, when the induction was concluded; for it was not without difficulty, that several members of the presbytery, most obnoxious to the people, escaped insult and personal injury on leaving the parish. So serious and wanton had been the breach of the peace, on this occasion, that several of the reputed ringleaders were afterwards brought to trial before the High Court of Justiciary at Edinburgh; but, from want of evidence in bringing home the charge to them, they were acquitted.

Among the individuals brought to trial on this occasion, was a
3.
Party demonstra-
tion.
person of the medical profession, a parishioner in
Culsalmond, who was charged with having been the
prime instigator of the disturbances that had taken place: And it may serve to demonstrate the spirit that was now abroad among the Non-intrusionists, that the acquittal of this person, certainly not a little unexpected, was celebrated by a public breakfast, to which he was invited. The opportunity afforded by the issue of this trial, of keeping active the flame which had been kindled in defence of the Church, represented as trampled upon by the Court of Session, was regarded as too favourable to be overlooked; while the spectacle did not fail to encounter the disapprobation of the discreet and sober citizens of the metropolis of Scotland; and was very far, in the end, from answering the purpose for

which it was got up, or reflecting honour on any of the parties engaged in it.

The parishioners,—dissentients from the settlement of the pre-
4.
Petition from the
Parishioners. sentee to Culsalmond, now made their appearance
 as petitioners to the Commission of the General
 Assembly, which met a few days after the settlement and riot had
 taken place. Their reception by that body was somewhat more
 gracious than that which they had received from the presbytery
 of Garioch; and, indeed, if a very generally prevalent belief was
 to be entertained, they had just come to the parties, in an official
 character, for further advice, from whom, individually, they had
 taken counsel in all that they had hitherto done. The new-born
 zeal of the parishioners of Culsalmond, that their spiritual interests
 should be confided to a pious and evangelical pastor, had somewhat
 disturbed the calmness of the “Dead Sea of Moderatism,” in the
 midst of which that parish was said to be situated. They had been
 for several years distinguished for the sobriety of their Christian
 demeanour, under the ministry of the very man who was now to be
 fixed permanently among them; and it was, moreover, worthy of
 remark, that the eldership of the parish, and those who were
 known for “the even tenor of their way,” as men of piety and
 morality, were well pleased with the minister; while he was
 opposed by some who had come but lately into the parish, and
 that under very suspicious circumstances, and bearing a very
 doubtful character as to honesty and integrity of conduct, which
 future occurrences served only to corroborate;—and by others who
 had occasionally come under, and had not all of them been
 released from, the censures of the church. Nothing, indeed, but
 appliances from without could account for the new, and, as it
 appeared to their neighbours, rather awkward position taken up
 by these parishioners; while it is but justice to notice, that the
 rabbling which took place on this occasion, was traced to parties
 who came from a distance;—and, although they had no inter-
 est in the settlement, took an active part in the disturbances.
 The parishioners were not, therefore, unlooked-for parties at the
 bar of the Commission, when they submitted to it, by their petition,
 that the presbytery of Garioch had acted in contravention not

only of the Veto law, but of the recognised laws of the Church prior to the Act of Assembly 1835, in so far as refusing to receive special objections against the presentee, and going on to his admission in the face of regular appeals and complaints duly tendered; and when they prayed that warrant might be granted by the Commission, for serving the petition and complaint on the presbytery and on the presentee to Culsalmund, appointing them to appear before the Commission, or the next General Assembly, to have such censure inflicted upon them as to these bodies might seem fit. It was also craved from the Commission that they would annul and rescind the pretended settlement, and take steps for the due and regular administration of ordinances in the parish of Culsalmund.

In this shape the matter came before the Commission; and the ^{5.} question immediately presented itself, how far Proceedings in the Commission. that body had any right to deal with it? This was at once decided in the affirmative, under a protest by a member of the Commission; and was rested solely on the power given to all Commissions, by the General Assembly, to take care that nothing occur to the injury of the Church, or the establishment thereof, between the rising of one Assembly and the sitting of another. When it was argued, on the other side, that the present was a private cause regularly before the lower courts, from whose judgment there lay the usual appeal and complaint to the synod and the General Assembly; and, moreover, that the Commission was most specially prohibited from entertaining any such cause in any shape whatever, the reply was at hand, that, from the circumstances attending this case, it came under the category of matters affecting the general interests of the Church. And although to this, again, it was answered, that by the same arbitrary rule the Commission might take up any case, however private, should they themselves see fit to place it in the catalogue of general interests, their right to do so was upheld, as might have been expected. During the whole of the contests and controversies, that now agitated the Church, Commissions were found the most convenient instruments for carrying out the extreme views of the spiritual independence party; and sanction-

ing them in taking up the very highest ground in their opposition to the rights claimed by the civil courts; and the presumption was fairly warrantable, that had many of the questions, which arose in the courts below, been left to come up to the General Assembly itself, without the interposition of the Commission, much of the future embarrassments of the Church might have been avoided.

Such a body as a Commission was first introduced into the Church of Scotland in 1596-7, for the purpose of
 6. Commissions,
 when introduced. better providing for "the plantation of kirks, and the sustentation of the ministry," but really to serve the purposes of the king, then bent upon the re-establishment of Episcopacy; and the measure was strenuously, although unsuccessfully resisted by the most zealous and consistent Presbyterians of these days, who held up these Commissions as the very "needle to draw in the episcopal thread"—as the "fatal Trojan horse, introduced to pull down the citadel." These bodies, however, were speedily found available, by those who constituted the majority in the Assembly, for such objects as they might have in view; and, although repudiated by the constitution of the Presbyterian Church, were still practically kept up, under the specious pretext of taking care that the Church should suffer no detriment between the rising of one Assembly and the sitting down of another. From the period of their institution, Commissions, while they doubtless accomplished objects the most beneficial, which could not await the sitting of the Assembly, had nevertheless proved the instruments, in many instances, of much oppression and injustice; and, at the stage in the Church's history which we have now reached, they had become remarkable for their illegal and unconstitutional proceedings. These anomalous bodies were grievously complained of soon after the Second Reformation, as usurping a power the most unconstitutional over the synods and presbyteries of the Church; and the Kirk was warned that, if she did not look to the dangers arising out of this source, she would have to lament, when it was too late to amend the evil. The management of these Commissions in 1649, as in 1840, had fallen into the hands of four or five members, who ruled all their proceedings; and one would almost

think, that the annals of the Church in this latter year were before us, when we find the writers of the former exclaiming : “ For God’s sake, look that this course in time be stopped, else the Commission of the Kirk will swallow up all other ecclesiastic judicatories ; and such ministers, who reside in and about Edinburgh, shall at last ingross all Church power in their hands. We meet with daily retraits, that the antient ministers are contemned, and the insolence of yong ones fostered, the very forerunner of Jerusalem’s destruction. The Lord make us wise in tyme.”

In the present case of Culsalmond, the Commission, sustaining
 7.
 Petition disposed of. its jurisdiction, proceeded to hear counsel, on the part of the parishioners of Culsalmond : but no appearance was made for either the presbytery or the presentee. It was moved and seconded, that the petition and complaint should be served as craved upon the parties ; that, until a final deliverance should be given, Mr Middleton should be interdicted from officiating and administering ordinances in the parish of Culsalmond ; and that the remanent members, who had dissented from his settlement, should be authorised to provide for their proper administration. It would perhaps be difficult to produce a case, in the history of Commissions, where greater outrages were committed on the ordinary and constitutional procedure of the Church courts of Scotland, known to and recognised by the law, than were furnished in this case of Culsalmond. A counter motion was made, in the form of Resolutions, sanctioning the principles on which the presbytery of Garioch had proceeded, both as these arose out of the Veto Act of the Church, and its disposal by the civil courts, and out of the law and practice, prior to the passing of that ecclesiastical statute ; and concluding with dismissing the petition and complaint. As these resolutions, moved by the reverend member who had previously protested against the power of the Commission to entertain the case, embodied the views entertained by the Moderate party in the Church, at greater length than they had yet found their way into the records of the Assembly, they deserve more particular notice in this narrative of events. They called upon the Commission to declare, “ 1st, That it had been adjudged by the Court of Session, and, upon the appeal of

the Church against this judgment, had been further affirmed by the House of Lords, that the presbyteries of this Church, in rejecting presentees to benefices and cures within the same, because of the mere dissent of the male heads of families in a parish, being communicants, are acting illegally and in violation of the statute. 2d, That the presbytery of Garioch, in refusing to reject the presentee to the benefice and cure of Culsalmond, merely because so dissented from, acted legally and in accordance with their duty, as laid down to them in the premises, by due and competent authority; and which authority, flowing from, and founded on the statutory law of the land, the Church herself had acknowledged and recognised in her pleadings and appeals in the case of Auchterarder. 3d, That the presbytery of Garioch, in refusing to refer the case of Culsalmond to the next General Assembly, as a disputed case under the Veto law, and in disregarding all complaints and appeals arising out of and founded on this act, against their proceedings in the settlement of Mr Middleton, according to the established laws of the Church, had acted consistently with their duty as declared by the House of Lords, inasmuch as that, to have referred the case of Culsalmond to the General Assembly, or to have received the appeals and protests tendered, and thereby to have delayed the settlement of Mr Middleton, would have been *pro tanto* to have acted illegally, and in violation of their duty; subjecting themselves, each and all, to have been brought before the civil courts for this contravention of the statute, and made liable to pains and penalties of the law, from which their ecclesiastical superiors could not relieve or protect them—the legal as well as the moral responsibility, in obeying the law, which ‘binds and astricts’ presbyteries to receive and admit qualified presentees to the benefices and cures, to which they are legally nominated, resting on presbyteries alone, and being manifestly incapable of being transferred to, or assumed by, the superior judicatories of the Church. 4th, That the presbytery of Garioch, in refusing to receive special objections, offered under the Veto law itself, and where there was a majority of dissents previously tendered, had so far due respect to that law. 5th, That the presbytery of Garioch did, upon the serving of the edict of induction, allow to

the people of Culsalmond an opportunity of stating objections to the presentee, when none were offered; and that, in doing so, the presbytery had respect to the law and practice of the Church, and to the rights and privileges vested by its constitution in the people of Culsalmond. 6th, That, in proceeding to the settlement of Mr Middleton, in the face of the appeals and complaints tendered and taken against their doing so, the presbytery must be held to have proceeded *suo periculo*—a procedure warranted by the practice of the Church in innumerable instances, and for which the presbytery are responsible only to the synod of Aberdeen and the General Assembly; and with these findings dismiss the petition.”

8. Commissions not attended by Moderate members. In the conflict now raging between the contending sections of the Church, the members of the Constitutional and Moderate party in the Assembly had, by this time, generally abstained from attending Commissions. It had been established, that the sentences passed by this reverend body might, at any time, be brought, by appeal of parties or complaint of members, under the review of the ensuing Assembly;—not less upon the merits of these sentences, than on the powers given under the remit made by the former Assembly; and every object worth seeking was regarded as obtained by the presence of two or three, to keep open in this manner the great questions, with which Commissions were now intermeddling in so irregular and illegal a manner. The motion, sustaining and serving the petition in this case, was accordingly carried by a large majority—the member who had made the counter-motion, along with two others who had divided with him, entering a dissent and complaint to the General Assembly.

9. Parishioners of Culsalmond unjustly treated. By the deliverance to which the Commission had now come, the induction and settlement of Mr Middleton in the parish of Culsalmond was, at least *pro tempore*, set aside and annulled; and the civil rights of both patron and presentee had consequently been invaded. Their title, therefore, if they should see fit to apply to the civil courts for redress, was unquestionable. By the same sentence, the majority of the presbytery of Garioch were superseded in the discharge of their duties, as regarded the parish of Culsalmond; and of this abuse in

the government and discipline of the Church they had also a clear statutory right to complain to the civil magistrate. But the injustice of this deliverance, towards the portion of the parishioners who had called and invited Mr Middleton to be their minister, was equally manifest. If the parishioners dissenting from the settlement could not, as they declared, without injury to their feelings and destruction to the Church, avail themselves of the religious services of the presentee, under whose ministry, be it recollected, they had for several years been sitting peaceably and contentedly, it did not follow, that those who valued these services, and who had obtained them, through the act and deed of the patron and presbytery, as a permanent gift, could, with any colour of justice, be deprived of them in the manner that had been attempted; and they were clearly entitled to have been heard for their interests. The dissenting parishioners of Culsalmond had, for several years, been themselves under the ministry of Mr Middleton, without complaint that he failed in any manner to edify and instruct them as their stated pastor; but now, on the appearance of the patron in the field, they suddenly discovered that he was not qualified to guide them. No such discovery, however, was made by the assenting portion of the parishioners, who, having known practically the worth and value of Mr Middleton's services, were desirous that these services should be fully and permanently secured to them.

The determination of the Commission to overlook what was due
 10. to those who had peaceably exercised their rights
 Riotous conduct noticed. under the laws of the Church, and to pay respect
 only to the complaints of the dissentient parishioners, was placed
 beyond all doubt, by the reception of a motion now made, that
 the Commission should record its high displeasure at the riotous
 conduct displayed on the occasion of Mr Middleton's induction;
 and should call upon the public authorities to adopt the necessary
 measures for vindicating the majesty of the law, and the more effec-
 tually preventing the recurrence of such outrages, which, in the
 then excited state of the country, might so reasonably be dreaded.
 The record of these transactions bears, that "the Commission,
 having had its notice drawn to certain most indecent and disor-

derly proceedings, on the part of the people assembled at the settlement of the Rev. Mr William Middleton in the parish of Culsalmond, as these appear upon the face of the extract from the presbytery records, now on the table, feels it to be its imperative duty to express and record its strongest and most marked disapprobation of these proceedings. And the Commission, with the view of obtaining the fullest inquiry into these proceedings, resolve to apply to her Majesty's Secretary of State in the home department, with a respectful request, that he would be pleased to direct such steps to be taken, as may most effectually obtain the same." The reception which this motion experienced from the Commission is deserving of very grave attention, as it marks the spirit and temper in which the Church was at this time proceeding. It might have been supposed, that two opinions could not have been entertained within the Commission, on the propriety of adopting this motion. The fact of the riotous and disgraceful conduct of the people was both matter of public notoriety, and was judicially set forth and admitted in the records of the presbytery of Garioch, then on the table of the Commission; and there remained apparently but one course to be pursued, to mark in the strongest manner its displeasure at such proceedings. The deliverance of the Commission, lame and hesitating, as regarded the conduct of the people of Culsalmond, and uncalled for, to a great extent, under the motion made, as respected the acts of presbytery, threw a light upon the spirit by which the majority of the Church were now actuated towards the civil authorities, that could not be mistaken. It was in these terms:—"While the Commission learn with feelings of regret, that the obstruction offered to the intrusion at Culsalmond is said to have given occasion to proceedings of an indecorous character in the church of Culsalmond, on the 29th November; and while they are desirous, that every facility should be afforded for inquiry into the behaviour of the people on that occasion by the competent authorities, both civil and ecclesiastical, they, at the same time, view with the utmost anxiety and alarm the course alleged to be followed in this case by an inferior judicatory of this Church, in setting at defiance the laws of the Church, obstructing the course of justice, outraging the rights and privileges of the people, and subverting the authority,

which the Lord Jesus has instituted in his house ; and, being deeply impressed with the apprehension of the disastrous and fatal consequences which must result from such conduct, on the part of presbyteries, the Commission desire to record their conviction of the absolute necessity of most decided measures being adopted by the General Assembly, for the redress of the grievous wrongs, thus inflicted on the Church and people, and for the prevention of these evils in time to come."

In this very singular and significant deliverance, the "obstruction offered to the '*intrusion*' at Culsalmund," as it ^{11.} Import of the Deliv-
verance in this case. was called, was very directly justified ; and the people of Scotland were, almost in terms, invited to follow, to a certain extent, the example set them in this instance, wherever the induction of a minister, against whom they had dissented, should be proceeded in by a presbytery. The obstruction offered to a court discharging a civil duty, and protected by the civil magistrate in person, only failed to be applauded by this Commission, because "*it was said* to have given occasion to indecorous proceedings in the church of Culsalmund !" And, moreover, one of the presbyteries of the Church of Scotland, and a court, both in its civil and ecclesiastical character, known to and recognised by the law of the country, and proceeding in the honest and open discharge of duties laid upon it by that law, was, in this case, held up by another body, not so clearly known to that law, and having no authority to interfere, as "obstructing the course of justice," "outraging the rights and privileges of the people," and "subverting the authority which the Lord Jesus has instituted in his house." With such excitements to riot and uproar, we do not wonder that, on a settlement in a neighbouring parish to that of Culsalmund taking place, where there also had been enlisted a body of discontented parishioners, the public authorities should have seen fit to provide for the preservation of the peace, by directing a military force to be in readiness in the neighbourhood, to suppress any commotion that might occur.

If the Commission, on this occasion, assumed a very bold and daring aspect, it must be allowed, that the position taken up by the presbytery of Garioch was well calculated to alarm the Non-intrusionists. It was also easy to see, that, in proportion as presby-

teries came forward, to conduct settlements after the manner laid down by the civil courts, the people might be marshalled on the side of the ecclesiastical; and the cry that their own rights and privileges had been outraged, was likely enough to rally them under the banner of the Church. The objection, which might be started, that the people, in doing so, might be placing themselves in opposition to the law, and might be incurring its penalties, it was plainly intended to obviate, by the scarcely less than impious assertion, so daringly made by this Commission, that presbyteries executing the law, and the civil magistrate in protecting them, were "subverting the authority which the Lord Jesus has instituted in his house." To every one looking but the least before him, it was obvious that the Church must, under this argument, assume the right of saying wherein, and to what extent, this "authority" exists; and that this right once granted to ecclesiastics, whether popes, or presbyteries, or Commissions of the General Assembly, and the reign of spiritual tyranny and domination had recommenced.

The presbytery of Garioch, according to citation, appeared at the bar of the March Commission, 1842, when the execution of the petition and complaint against them, at the instance of certain parishioners of Culsalmond, was duly returned. Answers to this petition were given in by the presbytery, and all the parties in the case cited to appear at the bar of the next General Assembly.

Protection and redress, under the sentence which had been pronounced against him by the Commission of November, was, without loss of time, demanded by Mr Middleton, the presentee to Culsalmond, from the Court of Session; and, so far as he, and the presbytery of Garioch, complained of having been punished ecclesiastically for having obeyed the law of the land, the Culsalmond and the Strathbogie cases stood in the same position. But, in the present instance, the deliverance brought before the civil courts was alleged to have been as illegal and incompetent, in respect of the powers usurped by the body passing it, as in regard to its merits; and hence was raised a new and perplexing point, still further involving the limit of ecclesi-

12.
Bold position of
the Presbytery of
Garioch.

13.
March Commission,
1842.

14.
Court of Session
applied to.

astical jurisdiction under the law of Scotland. When, indeed, the case was before the Lord Ordinary in the Bill Chamber, the counsel for Mr Middleton did not raise the question of the Commission's powers; and the interlocutor brought before the Inner House had no regard to the point. An attempt to have had this question discussed, and so far disposed of, by a reference to the Procurator, the legal assessor of the Church, in the case of Kemback, had been defeated by the Commission prohibiting that officer from giving an answer to the questions, which had been put to him by a member of the Assembly. This refusal indicated very strongly the tyranny with which Commissions at this time conducted themselves. The questions put were of the very greatest importance, looking to the probability of an action in the civil courts; and nothing but the apprehension, that the learned Procurator might have felt it his duty to have given such an answer, as would have shaken the jurisdiction then assumed, can account for the very unusual interference put forth at this time between a member of Assembly, not a lawyer, seeking information on a purely legal point, and the legal assessor of the house, whose duty it was to give such information. That the point was not one altogether so divested of difficulties as to render any information upon it unnecessary, was now made sufficiently evident, when, upon the pleadings on the other points involved in the Culsalmond case coming before the Inner House to a conclusion, the bench, of its own accord, directed counsel to address themselves specially to the question—How far a Commission of the General Assembly is a tribunal or judicatory of the Church established and recognised by the laws of the realm, and competent to pass such deliverances as were now complained of? Counsel were, accordingly, heard at great length on this point, and the constitution and power of Commissions were subjected to an ordeal, which they had never before undergone. When the case was afterwards taken up by the bench, no judgment was, after all, given upon this point. The judges were unanimously of opinion, that such a judgment was not necessary, in order to reach a deliverance on the case before it, as it stood on the grounds originally taken up; and they did not think it proper to dispose of such a question—a ques-

tion involving interests so extensive and important to both the Church and the people of Scotland—in a mere discussion in the Bill Chamber. Hence it has happened that this question, really lying at the foundation of much of the peace and orderly conduct of the Church, is still left a debateable point.

When the application for interdict and suspension of the sentence,
^{15.}
Proceedings before the Lord Ordinary. pronounced by the Commission, came before the Lord Ordinary on the Bills, his lordship did not regard the steps which the presbytery of Garioch had refused to take as coming within the Veto Act, but as proceedings ranging under the law and general practice of the Church, without reference to that act; and, consequently, he held the Commission as having dealt with a matter exclusively, and by statute and usage, subject to the jurisdiction of the spiritual courts, and beyond that of the civil to review. On these grounds, he refused the interdict and suspension craved.

The case was now brought, by a reclaiming note, before the
^{16.}
Proceedings before the Inner House. Lords of the First Division of the Court of Session, and counsel were heard, on both sides of the bar, at very great length. The argument chiefly rested on, in support of the Lord Ordinary's interlocutor, was, that the presbytery of Garioch were bound to have received the special objections, when offered against the presentee; and that, by the laws of the Church, they were not warranted in refusing the appeals and complaints taken to the superior ecclesiastical courts against their judgments, not to receive these objections; that, by consequence, the Commission had not exceeded its powers in censuring them, as it had done, for the course which they had pursued; and that, besides, in all this, no properly called civil rights, protected by statute, were involved. On the other side of the bar, it was contended, that the whole proceedings complained of would, if adopted, have been proceedings under the Veto Act, and, on the face of the record, had been so instituted; and had they, therefore, been agreed to, they would themselves have been illegal, and in contravention of the statute. The special objections, so much rested on, had likewise been brought forward under that act, although, as measured by it, they were clearly incompetent—the Veto law, as then existing, allow-

ing special objections to be given in, only in cases where a majority of dissents had not been found. But supposing the Veto law altogether out of the way, the special objections could not, by the law and practice of the Church, be tendered or received at the moderation of the Call, the stage at which, in this case, they had been brought forward. The time for objections to be tendered was upon the edict at induction being returned, and at that stage objections had been called for, and none had been offered. The presbytery and presentee had, therefore, in all their proceedings, been within the law, which they were bound to respect. They had refused to violate the statute by carrying into effect the illegal Veto, or receiving special objections, when these could not be legally tendered—namely, at the moderation of the Call, when the presentee is not even in court. They ought not, therefore, to have been punished for these acts by the Commission; but, having suffered wrong, in violation of the statutes, they had a title to come to the civil courts for protection.

The Court of Session, after hearing counsel, came, by a majority, to the finding that the interlocutor of
 17. Interdict and Suspension granted. the Lord Ordinary should be recalled, and that the bill of interdict and suspension, as raised, should be passed. This judgment was regarded by those, who then guided the councils of the Church of Scotland, as so important, and so utterly destructive of everything like that jurisdiction in ecclesiastical matters, which they held to have been hitherto so religiously guarded as lodged in the Church courts, that they entered an appeal against it to the House of Lords. By this time, however, the storm, that was ultimately to burst in the great secession of the 18th May 1843, was gathering from so many quarters, that this appeal was never prosecuted, and the judgment of the Court of Session became final;—thus establishing again, so far at least as interdict and suspension were sought, that, where any one feels himself aggrieved by the proceedings of any Church courts in Scotland, he has an action in the civil Courts against the parties alleged to be in transgression of the law.

Soon after the settlement at Culsalmund had taken place, under the circumstances of gross and flagrant violation of the law, which

we have noticed, the benefice of one of the ministers of Strathbogie, under alleged deposition, became vacant by the death of the aged incumbent. The Duke of Richmond, the patron, presented, in common form, to the living; and the presentee applied for induction and ordination to the majority of the ministers under the censures of the Church, and who had continued to meet and act as the legal presbytery of the bounds. The people of the parish, as was to be expected, were excited to oppose this settlement, and they applied, by petition, to the Commission of the General Assembly, who directed this petition to be forthwith served upon Mr Duguid, the presentee to the parish of Glass, and prohibited him, under pain of being deprived of his license to preach the gospel, from proceeding in his settlement before the deposed ministers of Strathbogie. As the presentee was expected to disregard this injunction, there was every reason to fear that the same disorderly scenes, which had occurred at Culsalmund, might be enacted at Glass; but means the most effectual were now adopted by the civil authorities, and a military force marched from Aberdeen to Huntly, in the neighbourhood of the vacant parish, to be ready, in case of need, to put down any popular disturbance. Everything, however, passed off quietly at this settlement. The occasion furnished, indeed, a subject of declamation, that the "booted and the spurred dragoon" again intruded the minister on the reclaiming congregation; and the necessity imposed upon the civil magistrates to maintain the peace, was attempted to be converted into a sacrilegious attempt to invade the spiritual province of the Church.

CHAPTER VIII

ASSEMBLY 1842 — CIVIL INTERDICTS — PATRONAGE — CLAIM OF RIGHTS—MINISTERS SUSPENDED — AUCHTERARDER DAMAGES ACTION.

AT the meeting of the General Assembly 1842, the most noble
J. the Marquis of Bute appeared as Lord High Com-
Assembly 1842; missioner, and opened it with more than usual pomp
Strathbogie Com- and splendour. The reverend Dr David Welsh, Pro-
mission. fessor of Ecclesiastical History in the University of Edinburgh, was
unanimously chosen Moderator—no attempt having been made on
the Moderate side of the Church to oppose his election, and by this
test to ascertain the relative strength of the parties now dividing the
Assembly. It was found, on the calling of the roll before the
election of Moderator, that a commission had been sent up from
the now *deposed* ministers of Strathbogie, appointing two of their
number, with a ruling elder, to represent them in this the supreme
judicatory of the Church. This commission had been lodged, in
common form, with the agent and clerk of the Church, and the
names of the representatives had been placed upon the roll;—a pro-
cedure on the part of these officers, on which several members took
occasion to animadvert, as an insult offered to the Assembly; and
which other members were well disposed to regard in a still more
reprehensible point of view. In the opinion of the reverend Mr
Carment of Rosskeen, the officers would not have insulted the
house so much, by sending up a commission “from seven tinkers
or scavengers” of Edinburgh, as by forwarding that which had been
put into their hands! The discussion elicited the fact, that some
important documents connected with the commission produced by

the minority, then acting under the authority of the Church as the presbytery of Strathbogie, had not been forwarded ; when the reverend Mr Dewar of Belle, one of this minority, produced an interdict which had been served upon him and his brethren, against sitting and voting in the Assembly. This interdict had been served in the month of June 1841, and had a special reference to such proceedings of the minority of the presbytery, as were now brought by their commission before the Assembly of 1842 ; but, on the motion of Dr Cunningham, the question was taken up without respect to its existence. The question presented, upon its face, some manifestly most important matters of consideration for the Church, but few difficulties, in regard to the great principles involved in its disposal. By those who held the deposition of the seven ministers to be good and valid, to all civil and ecclesiastical purposes, one course only remained—that of rejecting the commission presented for them ; those, on the other hand, who, like Dr Cook and his friends, regarded this deposition as null and void, and had intimated that from this position they could not depart, even if their own deposition should be the consequence, had an equally clear path of duty before them—namely, to sustain the commission offered. The presenting of these commissions, furnished to Dr Chalmers an opportunity, of which he availed himself, of again complaining, that the enemy from within was at work, to assist the enemy without in overturning the Church ; and that anarchy and disorder the most alarming were making fearful progress—unrestrained, as he said, in the present instance, even by the presence of royalty, in the person of her Majesty's representative. The Assembly, he added, had been opened with unusual splendour, but it would present a strange contrast between the impotence of the Assembly's doings, and the pageantry of its forms, if such a proposition as had been made could be sustained.

The eagerness displayed by the majority of the Assembly to prevent the interdict being noticed, which had been served upon the minority of the presbytery of Strathbogie, clearly indicated the feeling, that the proceedings of the Assembly, in sustaining their commission, would more and more assume the aspect of contempt towards the law of the land ; but the technical

2.
Position of the
Majority.

difficulty stated by the clerk of the Assembly, that no such paper as the interdict, presented by Mr Dewar, had ever been put into his hands, or was in any way in possession of the house, stood in the way of its consideration at that particular stage. On this ground it was agreed to take up the question of the competing commissions, without regard to the interdict; when it was moved, that the commission lodged by the majority of the presbytery of Strathbogie should be sustained. This motion, although it failed to find a seconder, and was, consequently, never put to the Assembly, was clearly the following out of all the principles, on which the Moderate party had taken their stand, to their obviously legitimate consequences. That party stood bound by their protests, to regard the ministers under alleged deposition, as still ministers of the Church of Scotland; and when they came in this character to the Assembly, with a commission, otherwise correct and formal, to have refused that commission, on the ground that they were deposed ministers, would have been to stultify all these protestations. Without reference, therefore, to the interdict, which the Assembly refused to hear, the motion to sustain the commission of the majority was clearly that which, in accordance with all these principles and protestations, the Moderate party ought to have adopted; and it is not, perhaps, easy to see why this proposal should have given way to that of Dr Cook, on this occasion, that the commissions of the minority should not be sustained. Such, however, was ultimately the shape in which the motion was put; when it was rejected, on a decision of two hundred and fifteen to eighty-five.

Upon the deliverance of the Assembly being given out, the ruling elder, returned by the majority of the presbytery of Strath-
3.
Protest by the
Elder.
bogie, tendered a protest against it; and against the Assembly as a full and lawful Assembly of the Church of Scotland, declaring that all the acts and proceedings thereof should be deemed and held to be null and void. This procedure, on the part of Mr Edmond—the ruling elder—was regarded by Dr Cunningham as an insult offered to the Assembly; and he proposed that the house, in vindication of itself, should find that Mr Edmond was no longer an elder of the Church. Dr Cook

protested strongly against the motion; and was supported so far in his views by Mr Dunlop, who was willing to make allowance for one acting inadvertently, as Mr Edmond had done. He would therefore give him an opportunity of apologising to the Assembly; and, for that purpose, he moved, that he should be cited to appear at the bar on a future day, to answer for his conduct.

The majority of the Assembly were not, on this occasion, permitted to escape from the consequences, to which the
^{4.} Appeal of Dr Cook. proposed procedure against Mr Edmond ought to conduct them, if they followed out their principles honestly and resolutely. Dr Cook called upon them to measure out to himself, and those who had supported him, the same justice as they were now proposing to deal to the Strathbogie elder, and at once to depose them from the ministry and the eldership; and it was put to the house whether, after deciding that Mr Edmond had not a right to sit in the Assembly, they could, in fairness and consistency, punish him for claiming this right. He had done nothing more than follow up the decision of the house with the steps necessary to maintain this right; and if allowed, as he had been, to claim it, he was not to be held as guilty of insult to the Assembly in still upholding it, in the manner clearly open to all standing in the same position. The discussion terminated by Mr Dunlop withdrawing his motion to call the ruling elder to the bar. It cannot be doubted, that the learned member was induced to adopt this step, by the firmness with which he saw that the Moderate party were at length prepared to act.

These proceedings, in regard to the elder returned by the
^{5.} Interdict intimated. majority of the Strathbogie ministers, had scarcely terminated until the gentleman, who had been chosen in this capacity, to represent the minority, brought the *questio vexata* again before the house. Major L. Steuart, who held the commission of the minority, intimated that, within a few days, he had received an interdict from the Court of Session, prohibiting him from taking his seat in the General Assembly, as the elder from the Presbytery of Strathbogie. He now stated his determination not to regard the interdict; justifying his conduct on the ground that he found nothing in the Bible, which he held in

the one hand, to demand from him obedience to the document, which he held in the other. The gallant elder was followed by one of the reverend commissioners stating to the house, that he also had been interdicted from taking his seat, as he had been found by the Assembly entitled to do ; but, finding that, in conscience, he could not yield obedience to this inhibition, he was resolved, by the grace of God, to persist in occupying his place within the Assembly.

This new interference of the civil courts—and that in a department of ecclesiastical procedure hitherto unaffected ^{6.} by the events which had arisen—could not fail to attract the deepest attention. It was at once pronounced by Dr Candlish as an incident unparalleled in the history of the Church of Scotland ; the most direct invasion of the constitution of the Assembly, and the privileges of the Church, that had ever been attempted ; and, without entering into any argument or discussion to establish these charges—which would, in fact, have raised the whole question of jurisdiction—he called upon the house, to invite and encourage the commissioners from the Presbytery of Strathbogie, to persevere in the course which they were pursuing ; and to protest against the attempts making by the civil courts, to interfere with the supreme judicatories of the Church of Scotland, in questions affecting the validity and competency of commissioners to sit and vote in these judicatories ;—such questions being alone within the jurisdiction of the ecclesiastical courts to determine. He took the opportunity of eulogising the conduct of the gallant elder, who, with the Bible in one hand and the interdict in the other, had made a statement of his determination in terms which he said must have profoundly affected the Assembly. The Assembly might not be able to protect the elder against the consequences of this determination ; they might fail in saving him from persecution and from prison ; but, by their sympathy expressed, as he—Dr Candlish—proposed, they might strengthen his hands and encourage his heart.

The motion, which Dr Candlish had now submitted to the Assembly, although apparently confined to an act of the civil court, which, it was admitted, had no precedent ^{7.} Remarks.

in the history of the Church, had reference to a long series of proceedings, in which civil interests were clearly involved; and it proved, beyond all doubt, the reckless haste with which the Church was now being hurried on, and was but too well prepared to sanction, that such a motion should have received the countenance which it found. It was opposed by Dr Cook, who, in moving that it should not be adopted, placed it in its true character as amounting to the assumption that the Church, constituted as an established institute under the law of the land, and sitting in that capacity, was prepared to violate that law, and to set herself in express opposition to its expounders. The amendment of the reverend doctor was, upon a vote, rejected by a majority of seventy-six.

The interdict served at this time upon the representatives of the minority of the presbytery of Strathbogie, constituted one of the points of complaint, afterwards carried to the legislature against the actings of the civil courts; and as the House of Commons refused to entertain this complaint, they so far recorded their opinion, that, in granting this interdict, the Court of Session had not gone beyond its powers, or infringed the spiritual liberties of the Kirk. Nor could the granting of this inhibition have excited surprise in any attentive observer of events. It was only following out a course, which, once entered on, and such interferences were inevitable. In the allegation made at the time, and afterwards renewed in the Protest at the Secession in 1843, that "the civil courts had usurped the right of determining, who shall sit as members of the supreme and other judicatories of the Church by law established, and of issuing interdicts against sitting and voting therein, irrespective of the judgment and determination of the said judicatories," it was overlooked, that no right was really assumed, and no interdict granted, except on grounds clearly showing, that the issuing of the inhibition was within the province, and within the duty of the civil magistrate, as these were measured by the standards of the Church, and the statutes of the realm. It could not be maintained, that the right to sit as members of "the supreme and other judicatories of the Church, by law established," was a matter solely within the judgment and determination of the Church courts, without holding that, in this respect at least,

8.
Interdict—ground
and future com-
plaint.

the Church, although “established by law,” still possessed inherent and independent rights, bearing on and modifying this relationship, but flowing from a source exterior to the law of her establishment;—a ground so thoroughly Popish, that it cannot be supposed it was ever meant to be seriously upheld. Giving the protesters credit, therefore, for resting on the law of the Church’s establishment as ruling the case, it was asked, who are the interpreters of the laws and statutes establishing the Church? It was not denied, that the courts of the Church had a right of “judgment and determination” in the matter of who are to sit as members in the supreme and other judicatories of the Church, as “by law established,” as a question of privilege, analogous to what might arise in other delegated bodies. It was a right every day exercised within the limits prescribed by and known to the law; but, like every other right, enjoyed by the Church as “established by law,” it was open to the civil courts to say, whether these limits had been regarded; and, by consequence, where a *primâ facie* case of intended transgression was made out, to grant interdict until the question was disposed of. This was, in point of fact, the whole amount of interference by the Court of Session on this occasion;—the question, upon its merits not having been brought before it, as the church did not see fit to try it. It is well worthy of remark, that this interference constitutes one of the grounds on which the Secession in 1843 stands justified; and on which the invasion of the spiritual province of the Church is rested. This is held up as one of the acts, done by the civil magistrate, amounting, on his part, and on the part of all who sanction it, to the denial of the headship of Christ in his own House, and demanding of every sincere and faithful Christian that he should separate himself from the Church in which it is countenanced!

An overture from the synod of Lothian and Tweeddale directed
9.
Act of Assembly
1799 repealed. the attention of the Assembly to the Act 1799,
 which had prohibited all the ministers of the Church
 of Scotland from employing any person to preach or dispense ordinances, who are not qualified, according to the laws of the Church, to accept of a presentation; or from holding ministerial communion, in any other manner, with such persons; and craved that the

provision should be rescinded. Dr Cunningham, who brought forward the overture, regarded the Act 1799 as highly discreditable to the Church. It had been practically violated in many instances; and the time was come when, in his opinion, it ought no longer to stand on the statute-book of the Church of Scotland. Dr Willis of Glasgow, in agreeing to rescind the Act, regarded it as necessary to impose some restrictions on the indiscriminate admission to the pulpits of the Church of Scotland, of ministers of other religious denominations; otherwise, he said, scenes far from either creditable, or tending to edification, might be exhibited. Dr Candlish looked upon the view taken by Dr Willis as involving the assumption, that the ministers of the Church of Scotland would not themselves prove faithful to their obligations. He held that the minister who, after preaching sound doctrine in the forenoon, could, in the afternoon, introduce to his people a preacher who would inculcate heresy, would himself give evidence, that he was not sound in the faith, and his ecclesiastical superiors would be called upon to deal with him. Let the liberty which the repeal of this act would give to all ministers, when abused, subject the parties to discipline, and he saw no difficulty in the way. Principal Lee said he had no sympathy with the Act 1799; but he recommended caution in opening the pulpits of the Church. Dr Guthrie could not concur in the necessity of such caution as was recommended. The act had been passed, he said, not to exclude heresy from our pulpits, but to exclude truth; and by again opening them the truth would be admitted. From what he knew of the dissenting bodies of Scotland, they would hail the measure with the greatest satisfaction. Dr Hill was of opinion, that the time was come, when a change must be made in the Act 1799. He had himself received ministers of other communions into his pulpit, and could not object to the alteration; while, at the same time, he recommended to the Assembly to guard against the abuse of this privilege. Mr Dunlop was opposed to the Act 1799, as most anti-Christian, and altogether destructive of the catholic nature of the Church of Christ, making the Church of Scotland no better than a sectarian Church; and he sincerely rejoiced in the removal of this hindrance to catholicity. The discussion on this subject terminated by Dr Cunningham

agreeing to introduce into his motion, that the General Assembly should, at the same time, call upon the members of the Church, to guard against, holding ministerial communion with men who were "not sound in the faith." After undergoing several modifications, introducing the presbytery of the bounds between the minister of the parish, and the minister of other denominations, whom he might wish to put into his pulpit, the Act 1799, in all its provisions, was again restored after the secession, and is now the law of the Church in the matter of ministerial communion.

The table of this Assembly, like that of the last, was loaded
 10.
 Overtures on Patronage. with overtures on the subject of lay patronage, calling for the adoption of such measures as should enable the Church to get rid of this alleged grievance. The result of the vote, when this subject was before the Assembly 1841, and when the sought-for abolition was refused by a narrow majority of six, gave token to its supporters that the present overtures would accomplish the object they had in view. These overtures had been sent up by all the synods of the Church, with one or two exceptions; and petitions against patronage had been presented by a large body of the people. Since the rising of the Assembly 1841, every means calculated to bear upon the object contemplated had been called into action; and the anti-patronage section of the Church, having, by this time, obtained a majority in all the inferior Church courts, failed not to avail themselves of their advantage. In this discussion, Dr Cunningham again came forward, in all his power and dogmatism of argument and illustration; going over the ground which he had before occupied; exulting, as usual, over the defeat of what he called the "tricks" of his opponents, in attempting to involve the abolitionists in perplexity, by calling for a definition of patronage, and in representing the changes in this system of settlement which the history of the Church afforded, as only so many transferences of patronate rights. According to him, the supporters of patronage admitted, with those who sought its abolition, that it meant the title, which is founded on the mere possession of property, or on some merely secular consideration, to interfere in the settlement of ministers; and they had relinquished, he said, the *argumentum ad invidiam*,

that those who held anti-patronage views, and thought the mode by which they had themselves entered the Church, sinful and anti-scriptural, ought to leave it, and to re-enter by a more scriptural door. "It was satisfactory," said Dr Cunningham, "to know, that this low, and mean, and despicable mode of arguing the question, is now left to the lowest and most despicable defenders of patronage;" and not less so, to find that it was now generally conceded, that he and his friends ought to be met on the ground of principle, not practice, when they maintained, that patronage is wrong and ought to be abolished. He added, indeed, that he would allow the man, who really attempted to meet him on the ground of principle, to throw out the hint or taunt that he, and those who thought as he did, ought to leave the Church, if they would maintain their consistency. The argument, if it could be so called, was only, he said, misplaced and contemptible, when unaccompanied by the courage to take up the broader ground. From the narrower ground, he said, the other side had been driven by the last Assembly; and he expressed a hope, that they would not return to it in the debate then opening. It may, however, be fairly inferred from this, that it was a line of discussion, which Dr Cunningham felt, all the time, was likely to prove more detrimental to the cause, which he and his friends advocated, holding the position they did, than to the parties employing it. The motion which he called upon the Assembly now to adopt was in the following terms,—“That the General Assembly, having considered the overtures and petitions anent patronage, resolve and declare that patronage is a grievance; has been attended with much injury to the cause of religion in this Church and kingdom; is the main cause in which the Church is at present involved; and that it ought to be abolished.”

In supporting this motion, Dr Cunningham rested all his argument on the answer that must be given to the question—“How ought pastors to be appointed to Christian congregations?” and this answer he again found satisfactorily brought out, under another question—what are pastors? “They are, he said, office-bearers in a kingdom which is not of this world;” and, consequently, their appointment ought not to be rested in any civil or secular authority, referable to this world.

He next demanded, what were the functions of these office-bearers? and these, he maintained, were to carry on the affairs and government of a free and independent society; and that, consequently, the interference of any external authority was destructive of these functions. To have independent authority and jurisdiction within, and to be controlled by any authority without, were palpable inconsistencies, and could not coexist; and hence, he argued, that if the independence belonging to the Church was not to be surrendered, patronage must be abolished; and this he held to be quite enough to demand the adoption of the motion he had submitted to the Assembly. The propositions, which he had laid down, must, he said, be admitted; and, if admitted, it must be further conceded, that the existing system of patronage which he sought to abolish, as it destroyed the independence of the functionaries in Christ's house, so was it inconsistent with Scripture. In the Scripture alone were we, of course, to discover whence is derived the power of appointing office-bearers in Christ's house; and to whose hands this is delegated. This important duty, he went on to say, was, on all hands, allowed to be lodged in the Church courts; and into this province no earthly power was entitled to enter. In the same dogmatical style, Dr Cunningham proceeded to assert, that it was agreed, on all sides, that it belongs to the Church courts alone to say, whether they shall admit or ordain any man brought before them;—a position which he must have well known that the Moderates would not admit to the extent demanded; which the civil courts, under the laws erecting the Church of Scotland had refused to sanction; and to maintain which was the most palpable *petitio principii* imaginable. But, assuming that presbyteries had all the powers of admission which he gave them, the argument of Dr Cunningham demanded, on the same principles, that all power of election should be vested in the people; or, at least, that the matter of the appointment of pastors should be left to be arranged between the presbytery and the people—that patronage, which introduced a foreign and anti-scriptural element, should be abolished. It thus appeared, that this system stood equally in the way of a Veto by the people, and the exercise of the *liberum arbitrium* by the Church; and hence the *delenda est Carthago* now fulminated against patronage.

The motion of Dr Cunningham was met by an amendment from
 12. the Procurator, that it was not, in present circum-
 Amendment by the
 Procurator. stances, expedient to entertain the overtures submitted ;—an amendment, which did not certainly meet the question before the house, as it ought to have done, when it sought support from those who had, all along, maintained the system of patronage. This was seen and acknowledged by Dr Cook, who, in supporting the amendment, expressed his wish, that the qualification, *in present circumstances*, had not formed a part of it ; taking care, at the same time, to state, that he could not deem it expedient, in any circumstance yet adduced, to depart from a system of settlement, having so much to recommend it, and of which he expressed his unqualified approbation. Dr Chalmers declared, that, at length, he felt himself shut up to the conclusion, that there was no comfortable settlement for the Church, but in the utter extinction of patronage. The attempt at curbing it by the Veto had, he said, proved ineffectual in guarding the Christian privileges of the people, and the spiritual independence of the Church ; but, at the same time, he would guard the right of electing pastors, if given to the people. He did not mean, by the people, the inhabitants of the parish in general. Election, in such hands, he would consider to be as objectionable as the present system of patronage ; and he would confine it to parishioners being communicants, reserving to the Church to deal with their right as she might see fit, in the way of raising, as required, the standard of qualification to elect, as she may raise the qualification to be elected. Dr Robertson of Ellon, while he supported patronage as a mode of settling ministers, had admitted, when the question was before the Assembly of 1841, that the right ought to be in the hands only of Christian men ; and this he repeated in the debate that had now occurred—a concession, to which not a little importance was attached as a proof, that anti-patronage views were forcing themselves into the Moderate camp. The discussion, which had been adjourned, extended to great length, but exhibited no argument that had not been repeatedly before the Assembly. On a division taking place, there appeared for the motion of Dr Cunningham two hundred and sixteen ; and for that of the Procurator one hundred and forty-seven.

The proceedings of the civil courts, in issuing interdicts and sus-
 pensions in the matter of ecclesiastical sentences,
 13. Overtures on civil encroachments. had, by this time, and through the aid of a well-
 organised agitation over the country, created an alarm throughout
 the Church, which manifested itself in a number of overtures, sent
 up from presbyteries and synods, anent "encroachments on the
 spiritual privileges of the Church." These overtures were under-
 stood to emanate from the influential body at Edinburgh, into
 whose hands the management of matters had now fallen; and to be
 sent down by them to the provinces, to be in due time returned as
 the spontaneous acts of presbyteries and synods. A stronger
 demonstration, than had yet been ventured on was now deemed
 advisable, and the way was paved for it by means of the present
 movement over the Church;—a movement not altogether confined
 within the walls of the Church judicatories, but extending to
 parishes and congregations, who were stimulated, by every art of
 persuasion, to take a part in it; while the alternative was now
 openly brought forward of a *secession* from the Established
 church, should the "encroachments" of the civil courts receive
 the sanction of the legislature, to which it was determined to
 carry up a protest and declaration. These ecclesiastical agitators
 found it an easy undertaking to rouse a part of the population, on
 the questions they brought before them. The air of a religious
 feeling and principle, with which they invested it, gave to it a claim
 to attention with the many in Scotland, who still retained a regard
 for sacred and holy things; while the appeal made to the people
 by their ministers, to judge and decide for themselves on a matter
 in which, they were told, they had so near an interest, flattered
 their vanity, and secured their support. It was, in this manner, and
 borne up so far on the popular wave, that the subject of the spiritual
 independence of the Church came again under the grave con-
 sideration of this General Assembly. It was introduced by an
 overture for a Declaration and Protest against the encroachments of
 the civil courts, and a Claim of Right to those spiritual privileges
 which it maintained to belong, on both inherent and statutory
 grounds, to the Church; and after a long debate, and on a division
 of 241 to 111, this overture was adopted. This Declaration, Pro-

test, and Claim of Right, which soon became so celebrated, was met, as an amendment to its reception, by a series of resolutions, proposed on the Moderate side of the house, finding the Veto law null and void; cancelling all the penal procedure which had taken place upon it;—declaring, at the same time, that there is a spiritual government in the office-bearers of the Church, committed to them by her great Head, and independent of the civil power; setting forth, that the intrusion of unqualified and unsuitable ministers is at variance with the principles of the Church of Scotland, and that, moreover, the application of these two great and leading doctrines to particular cases, while it may occasion a conscientious diversity of opinion, ought to afford no good ground for separating from each other, or not continuing members of the same ecclesiastical body;—that the agitation, therefore, which had arisen upon these points ought to be allayed; and that ministers ought, henceforth, to devote themselves to the assiduous discharge of their pastoral and parochial duties; and, finally, that as parishioners under the law, as declared by the Church in 1833, may state any objections to a presentee, of which objection the presbytery is, under appeal to the superior Church courts, the only judge, there exists every security against the intrusion of unsuitable and unqualified ministers; while the door is always open to seek, in a legal and constitutional manner, any measures which may appear calculated to increase this security.

It is impossible to regard these resolutions with any attention or
 14. common candour, and not acknowledge in them a
 Character of these spirit of conciliation and Christian forbearance and
 resolutions. charity highly commendable. And it can scarcely be doubted, that, when many, who have cast themselves out of the Church of the Establishment, come to reconsider them with unheated and unbiassed minds, they must feel satisfied that their adoption, in place of the Claim of Right, was the course of conduct dictated by everything like a true regard to the best interests of the Church and country. Unfortunately for the peace and unity of the Church of Scotland, the sound and salutary counsels which they embodied were disregarded.

"The Claim, Declaration, and Protest* anent the encroachments
 15. of the Court of Session," as thus adopted by the
 Claim of Rights. Assembly, was ordered to be printed among the
 public acts of the Church, and to be laid, in a humble address,
 before her Majesty and both houses of parliament. This document
 extended to a more than usual length; and embodied a very detailed
 view of the provisions of former acts of the Scottish and British
 parliaments, in regard to the Presbyterian Church and its privileges,
 with a running argument, attempting to demonstrate that these acts
 and statutes clearly upheld the Church in the position of resistance,
 which she had assumed towards the civil courts, and as clearly
 proved that these courts had committed an illegal and unconstitutional
 irruption into the spiritual territories of the Church. In
 this declaration and claim, the doctrines on which the dominant
 party had, by this time, taken their stand, under pledges from which
 they could not honourably recede, were fully set forth; and they
 were now concentrated in a manifesto, having such a public character
 and importance imprinted on it, as to leave no room for any
 men of principle and good faith, who agreed to it, to draw back,
 when the anticipated alternative of secession from the Established
 Church should present itself. When the Moderator, as directed by
 the Assembly, requested that the Lord High Commissioner would
 present the Address on Patronage and the Claim of Right to her
 Majesty the Queen, his Grace replied, that he would have the
 honour to do so; but he added, in a manner the most emphatic,
 that he desired it to be distinctly understood that, in doing so, he
 did not express approbation:—an intimation which ought to have
 assisted in opening the eyes of the dominant faction to the precipice
 towards which they were hurrying on the Church.

From setting forth the spiritual independence demanded in the
 16. Declaration, Protest, and Claim of Right, the Assem-
 Proceedings against bly proceeded practically to exercise the powers
 certain ministers. which they held themselves to possess, in dealing with the ministers
 who had, by this time, been reported as having held communion
 with the deposed brethren of Strathbogie. This matter had been

* *Vide* Appendix, A.

brought before the August Commission of 1841, on a report from the special committee, appointed to assist the minority of the presbytery of Strathbogie, in conducting ministrations within the alleged vacant parishes, when the ministers, delated as having held communion with the Strathbogie clergymen, were handed over to the several presbyteries to which they belonged, to be dealt with according to the discipline of the Church. When these presbyteries proceeded to obey this remit, the cases were carried from them, by appeal, to the superior courts; and in this manner came before the Assembly. The motion made, in the August Commission of 1841, to deal with these ministers, had been accompanied by a resolution to address a remonstrance to the offending brethren, who, it was alleged, had become schismatics and separatists by defying the discipline of the Church, "setting forth the true nature of the offence involved in the conduct complained of, and its disastrous effects in aiming a fatal blow at the unity of the Church, and threatening to rend her asunder;" and adverted also to "the awful responsibility incurred by any who follow such a course, and the painful but imperative necessity which it lays upon the Church to vindicate her authority and that of her great Head." The motion to remit and to remonstrate was carried, at the Commission, on a division of 60 to 13; when Dr Cook, and those dissenting along with him from the deliverance, gave in a paper, in which they again declared, that the seven ministers of Strathbogie, having done nothing incompatible with their duty as good subjects, would still be regarded by the subscribers as if no sentence of deposition had passed against them. The subscribers then went on to say, that they would look upon any attempt to punish those, who so regarded and treated the Strathbogie ministers, as a perseverance in that course of defiance which had already introduced so many lamentable dissensions. They likewise placed on record their conviction, that the deliverance, from which they dissented, would put an end to all hopes of devising any measure by which the members of the Church might be united; and would impose upon them—the dissentients—and all who agreed with them in opinion, the necessity of taking such steps, as might appear most effectual for ascertaining, from competent authority, whether those who then dissented, and

such as might concur with them;—or those, who continued to set at naught the law of the land and the decision of the supreme civil courts, in what they esteemed a matter of civil right—were to be held, by the legislature of the country, as constituting the Established Church, and as entitled to the privileges and endowments conferred by statute upon the ministers of that Church.”

The ground at length taken up by the Moderates, in these
 17.
 Important ground
 now occupied. Reasons of Dissent, was one which, had it been occupied at a more early period, might have been attended with manifest advantages. The question between the contending parties might, in this case, have been settled, one way or another, before the flame had spread so widely over the country, and the peace of almost every parish in Scotland been invaded and disturbed; and the Secession from the national Church, which afterwards occurred, might have been the less extensive, as the pledges had not yet been come under by many, from which it was afterwards found impossible to recede. The unwillingness of the Moderate party to bring matters to extremity had been shown on many occasions; but a little foresight ought, perhaps, to have taught them, that this forbearance would only, in the end, aggravate the mischief with which the Church was threatened; as it only served to encourage their opponents in their defiance of the civil power, and enabled them to enlist many under the banners of Non-Intrusion and Spiritual Independence, who felt at first very indifferent upon these questions. Be this, however, as it may, the Reasons of Dissent brought forward at the August Commission of 1841, as they indicated the occupation of a ground more decidedly opposed to the course which the Church was pursuing, than had yet been taken up by the Moderates, so were they eagerly seized upon, by the men now conducting the councils of the Church, as an open and distinct avowal, by Dr Cook and his friends, that they had thrown off their allegiance to the judicatories of the Church; and were about to form a separate communion; and the cry of *schism!* resounded loudly over the Church. To give the greater effect to this cry, a special meeting of the Commission was called upon requisition, to take into consideration these Reasons of Dissent, which had been signed by no more than thirteen, and of

these only two were ministers possessing cures ;—when a series of resolutions was brought forward and agreed to unanimously,—no members of the Moderate side of the Assembly having attended this meeting. The spirit, in which this matter was taken up by the majority in the Church, may be gathered from the first of these resolutions, where the Moderate party are declared to have openly set at defiance the great principles, that “no man is to be intruded into a parish contrary to the will of the people,” and that “Jesus Christ, as the sole head of the Church, has established therein a government in the hands of office-bearers distinct from the civil magistrate.” While these principles, as known to and measured by the law and constitution of the Church of Scotland, had been uniformly upheld by the Moderate party, it was obvious that there was nothing in the Reasons of Dissent, now brought forward, indicating a greater defiance of the authority of the Church than had been embodied, again and again, in protests taken against a variety of the sentences recently passed, and in speeches again and again made before the Assembly, when the questions in dispute came under discussion ; while it might be admitted, that the persecuting acts, to which the dominant faction were now proceeding with all who countenanced the Strathbogie ministers, had at length compelled their opponents to speak out in the plainest language they could find, and to declare their conviction that an “appeal to Cæsar” could alone give peace to the Church. In the mean time, it could not fail to be seen, that the eagerness to fix on Dr Cook and his friends the stigma of being schismatics, only betrayed the consciousness of those, who so held them up, that they themselves were more likely, and that more justly, to incur the reproach. When the Commission spoke, as they did in these Resolutions, of the assumed application to the legislature, as being an unjust interference with the course of judicial proceedings, then in progress between the Church and the parties who had called in question her jurisdiction, it could not have been imagined that, within a few months afterwards, the Church, under the guidance of the same men who brought forward this complaint, would be found applying to both the Queen and parliament in addresses and petitions, avowedly calling upon them to interfere and arrest the cur-

rent of judicial procedure, which was then going on: and looking to the position taken up in May 1843, by those, who now constituted the majority in the Church, when they became Seceders from her communion, it must excite some surprise, that such a declaration should have been put forth in these Resolutions, as that, "notwithstanding the new and formal obstacle interposed by the act of those, who are virtually beginning a Secession from the Church, she must still feel it to be her duty, as it must ever be her desire, to seek, if possible, by friendly conference, to arrest these parties in a course of conduct which must seriously diminish the hopes that might be entertained of a harmonious settlement of the Church's difficulties." No doubt, however, could now be entertained, that those who had obtained the management of ecclesiastical affairs in the Church of Scotland, were beginning to feel that they were about to be entangled in the very snares which they had cunningly laid for others; and the determination come to, at this time, to take instant steps to defeat the criminal threat of a secession, put forth by Dr Cook and his friends, was in strange and uncouth keeping with the end to which all their own proceedings were so distinctly, and indeed, avowedly, conducting. The proposal adopted by the Commission, of a conference, with the view of giving the parties charged with a desire after secession "a place for reconsideration of their position, and for pausing in their dangerous and disastrous course," had something in it, under these circumstances, bordering on the ridiculous; but the resolution grafted on all this preliminary parade, still more strenuously to agitate the people of Scotland in defence of their religious rights and liberties, betrayed the real object in contemplation by this attack upon Reasons of Dissent, which truly presented no doctrine or threat that had not frequently found a place in the records of the Assembly and its Commissions. It was felt, that agitation must not be permitted to subside, as it had become more and more necessary, the nearer the crisis of the Church's fate approached; and the present was deemed too favourable an occasion to be overlooked for keeping it up. The utter imbecility with which all this "note of war" was followed up, so far as regarded Dr Cook and the other dissentients, was not a little remarkable, and served still farther to show, that the cry of

schism and secession had been raised to serve other and very different purposes, than maintaining the unity and integrity of the Church.

When the Assembly met in 1842, the schismatical Reasons of
 18. Dissent, which had found so much attention from
 Ministers arraigned. the Commission of August 1841, and formed part of the record of the Commission, were no longer heard of; but the case of the ministers, who had received the communion from the hands of the Strathbogie brethren, under alleged deposition by the Church, was now taken up by the Assembly, on a report from the Special Commission of 1841; and after various steps—such as appointing a committee to confer with these ministers, and which conference ended in nothing—the Assembly, at its last sederunt, suspended them from all their judicial functions in presbyteries, synods, and assemblies, for the space of nine months. The parties implicated in this deliverance—such, at least, as were members of the house—had taken their places at the bar, on the citation given, under a protest, that they did not thereby admit the jurisdiction claimed over them, or the power of the Church courts to punish them for the matters laid to their charge;—the criminality of these matters resting on what they denied—an assumption, that the Strathbogie ministers had been legally and competently deposed; and they reserved to themselves all remeid-at-law against any sentence that might be pronounced;—steps in themselves amounting to acts of disobedience and insubordination, as palpable and flagrant as any for which the Strathbogie ministers had been deposed; inasmuch as they asserted or assumed a supremacy in the civil over the ecclesiastical courts, utterly subversive of the spiritual independence and co-ordinate jurisdiction claimed by the Church. These parties were charged with having received the Sacrament of the Supper from the hands of deposed ministers. They pleaded, of course, not guilty to the charge; and the whole question hinged on the point, whether the Strathbogie ministers had, or had not, been deposed according to the laws of the Church. The execution of the sentence of deposition had been staid by interdict and suspension from the Court of Session; and an action of reduction was then *sub judice* before the competent civil tribunal, in which the

Church herself was a party. If this action should terminate in sustaining the sentence of deposition, as valid and legal in itself, and as having been pronounced by a competent and properly constituted court, the ministers at the bar might have no defence; they might be justly liable to the heaviest censures of the Church, and on this issue they had willingly perilled their case.

When, in face of the defence thus set up by these ministers, the
 19. sentence of suspension for nine months from their
 Protest renewed. judicial functions was passed upon them, they renewed their protest; and, soon after the rising of the Assembly, the question was brought by one of their number before the Court of Session, and interdict and suspension against its execution were obtained. Two of the ministers, now suspended for having held communion with the Strathbogie brethren, were within the bounds of the Synod of Aberdeen; and when that very reverend body met in October 1842, it was carried by a large majority, to regard the sentence of the General Assembly as illegal and incompetent, and to permit the suspended brethren to take their seats. The decision of the Synod was the more marked and disrespectful to the supreme judicatory of the Church, that the parties suspended by the Assembly had not claimed their seats as members; and one of them had even refrained from acting, since his suspension, in the presbytery to which he belonged, and of which he was a distinguished and leading member. In the Synod of Lothian and Tweeddale, to which three of the suspended ministers belonged, a motion was made by a reverend member, that their names should not be struck off the roll; and, on this motion being lost, a protest and dissent were duly taken—an act of contumacy and insubordination, with which anything that had been done by the Strathbogie ministers was scarcely to be compared, but with which the dominant party felt itself unable to deal; and, by this inability, registered their own powerlessness, in practically maintaining the position of spiritual independence, which they had so unwisely taken up. In the mean time, several of the ministers suspended by the Assembly, as well as others, continued to cultivate a brotherly communion with the Strathbogie brethren;—to assist them in their pulpits, and to receive religious ordinances at their hands; and in

this manner the flame of rebellion spread more and more over the Church; and more and more betokened a crisis to be near, when the competent civil authorities must decide, which of the parties dividing her so lamentably was to be recognised as the national Establishment. To this issue the proceedings of the dominant faction were now driving affairs, without the intervention or aid of any reasons of dissent by the minority; and it was only ultimately averted by this party, of their own accord, seceding from the Church, before the civil magistrate was called upon to interfere.

It did not fail to attract notice, how singularly ill adapted was
 20. the censure imposed on the ministers, who had sym-
 Incongruity of the pathised with the Strathbogie brethren, to the spiri-
 censure imposed. tual offence with which they stood charged. That offence was the act of assisting and countenancing their brethren in their pastoral and ministerial functions, and the punishment imposed was that of being disabled, for nine months, from sitting in any Church courts—kirk-sessions excepted. It would clearly have been a more consistent course of procedure, to have tied up the hands of the offenders from the exercise of their own ministerial and pastoral functions; but on a step so bold and honest the Assembly had not, at this time, the courage to venture. Nor can it well be doubted that, in limiting the period of suspension from judicial rights to nine months, the majority had a regard to the constitution of the next Assembly, which, had the censure been prolonged beyond the period of its meeting, would, of course, have had its competency and legality called in question, in a manner that might prove extremely troublesome.

It now became the duty of the Non-intrusion Committee, to give
 21. in to the Assembly a Report of the proceedings, under
 Report of Non-in- their appointment by the last Assembly, which was
 trusion committee. done by the convener, Dr Gordon. The subject of the bill introduced by the Duke of Argyle, and to which the Assembly 1841 had given a qualified approval, occupied a large portion of the report; and the suspension of that bill for some time, in consequence, as stated in the report, of a dissolution of parliament, and its ultimate withdrawal soon afterwards—on the ground, as further mentioned, that it would not be expedient to have it discussed in so

short a session of parliament as was then expected—were brought before the Assembly. From acting the legislator, his Grace had now, it seems, become the adviser of the Church, and he counselled his friends to adopt measures for the better enlightening members of both houses of parliament on the subject of the Scottish Church question. The change, which had just taken place in her Majesty's councils, appeared to the Committee to call very strongly for this step, more especially as it was well known that the members of the new Cabinet were far from sound in their views on this subject; and a large and special deputation had been appointed to wait on Sir Robert Peel. The Report expressed considerable disappointment at the reception of this deputation by the Prime Minister, who, while he received them courteously, held out no encouragement to enter any discussion, or any hopes of his becoming a convert to Non-intrusion and spiritual independence doctrines; and gave them no other course to pursue, than to leave the memorial, which they had drawn up, to produce its impression. It was in these circumstances, as stated in the Report, that Sir George Sinclair appeared in the field, to whose services, in the cause of Non-intrusion, the report bore the rather singular, and not very flattering testimony, that "it was not necessary to impute blame either to him or to any of the other parties engaged;" and as the resumption of the subject would be irksome, and could serve no good purpose, the Committee, in their report, thought it proper to pass it with a very brief notice; merely remarking, that the basis of the *liberum arbitrium*, which Sir George urged upon it, would, if adopted, have proved the most undesirable of any that had been proposed. The statement made by Sir George Sinclair and the Dean of Faculty, in various documents that had been published, was altogether overlooked in the report—namely, that the Committee had, at one time, agreed to the basis proposed, and had even consented to the condition, that if the bill of Lord Aberdeen, as amended by Sir George Sinclair, should pass during the existing session, they would receive it, and would recommend the removal of the censures which had overtaken the Strathbogie ministers. Of these important steps towards reaching the peace of the Church—taken, it was said, by the Committee, in concert with Sir George Sinclair and her Majesty's government—the Assembly

was left, by the report, in utter ignorance. Nor was it even hinted, that the great obstacle to the thus-agreed-upon mode of settlement, might have been found in the refusal of the Strathbogie ministers, to subscribe the letter to the Moderator of the Assembly, which they had received ready-drafted for their signature ; and of which they had been assured, that the Non-intrusion Committee had approved. The Report, at the same time, furnished a detailed account of the circumstances under which the Duke of Argyle retired from, and Mr Campbell of Monzie entered, the field of legislation ; and expressed regret, that anything should have occurred to postpone the second reading of the honourable member for Argyleshire's measure ; as the Committee had reason to believe that steps had been taken to obtain a very full discussion of the whole question in the House of Commons, had it been brought forward. The general view taken by the Committee of the position of the Church in May 1842, as compared with that which she occupied in May 1841, was, however, on the whole, that the principles on which she was standing had come, in many quarters, to be better appreciated. They were regarded, it was hoped, with more respect to the peculiar faith and feelings on the topics involved, as these existed within Scotland, than to any general principles or doctrines entertained in other countries ; and a hope was expressed, that the enlightened statesman, by this time at the head of her Majesty's councils, would demand no concession from the Church through the medium of some ambiguous or incongruous measure, calculated only to prolong existing confusion :—a plain allusion to the “movement” by this time made “by some members of the Church,” which the report went on to repudiate, as little calculated to reach a desirable conclusion. This was language, in regard to the *liberum arbitrium* basis of Sir George Sinclair's amendment of Lord Aberdeen's Bill, very different from what had once been held by the Committee ; but, by this time, the explanations, already noticed, as having been come to between Dr Candlish and the Dean of Faculty, on the import of this basis, had been reached, and the whole Sinclair fabric had tumbled to the ground, to be revived, however, in a somewhat modified shape, in the Scotch Benefices Act of 1843. The Assembly was called upon to express the obligations

of the Church to the Duke of Argyle and Marquis of Lorn ;—her debt to Sir George Sinclair was altogether forgotten.

22.
Debate on the Report. Moderate party from taking any part in the discussion ; and Dr Cook contented himself with opposing the practical measure arrived at—the appointment of a special Committee, to carry out the views contained in the Report. It was one section of the Non-intrusionists, marshalled against another, that constituted the leading feature in this discussion, and exhibited a rather singular spectacle. Dr Leishman, who came forward as the leader of the rebel ranks within the Non-intrusion camp, occupied in truth the very ground which the Non-intrusion Committee had once taken up, in their negotiations with Sir George Sinclair, but which circumstances had occurred to call upon them to relinquish. Like the Committee, Dr Leishman would have preferred the bill of the Duke of Argyle, or that of Mr Campbell, to the measure of Sir George Sinclair ; but he was willing to take less, when more could not be obtained, in order to reach the great object—the peace and settlement of the Church. And certainly, had he been correct in his view of Sir George Sinclair's amendment, that it left a presbytery at full liberty to reject a presentee on no other ground than that the people declared they could not be edified by him, there was enough of the Non-intrusion principle to satisfy any reasonable man. No such power, however, had been contemplated by this amendment, as understood by the Dean of Faculty and Lord Aberdeen. It had, indeed, been substantially so interpreted by Dr Gordon and others ; but, even admitting Dr Leishman's view of it to have been correct, it was now at least rejected by the Non-intrusionists themselves ; and he and his friends stood forth in a position which, in no question involving great and obvious principles, ever yet commanded great respect—that of the “ middle party.”

23.
Explanations by Dr Candlish. In the course of the discussion that now took place, Dr Candlish adverted briefly to the extent to which the question of reponing the Strathbogie ministers had been involved in the negotiations with Sir George Sinclair ; and denied that the correspondence of the worthy baronet indicated anything as

having passed on this subject, beyond an occasional conversation with individual members of the Committee;—a view of the matter very opposite indeed to that which had been intimated to the ministers of Strathbogie; but certainly of the less consequence, as under the fullest confidence that the Committee had agreed to repon them, if they signed the proposed letter, they had still felt themselves bound in duty to refuse.

The cases of Auchterarder and Strathbogie, although the only cases brought before the Civil courts, did not stand alone in the Ecclesiastical, which were not certainly to blame if the Court of Session had not its hands fuller than they were with Church questions. The presentee to Kilmarnock, a living in the gift of the Duke of Portland, had undergone the ordeal of the Veto—the Presbytery of Irvine not taking the same view of their duty under this ecclesiastical statute, as had the Presbytery of Strathbogie; and he had come through it so far triumphantly, that a majority of communicants on the roll, dissenting, could not be obtained against him. It was, however, objected to him, by a body of the parishioners, that his views of divine truth were superficial and inadequate; and that he had preached in the pulpit of one of the suspended ministers of Strathbogie. The case came up to the Assembly, unaccompanied by any evidence that these objections were well founded, or any judicial admission of their truth by the presentee; and it was contended for the Synod of Glasgow and Ayr, who had ordered a proof of the objections to be allowed, that this was the only just and competent mode of disposing of the case. Dr Cunningham discovered a shorter road to a decision. The case, he alleged, was just one of a simple translation; and the question before the Assembly was, whether it was for the *magis bonum ecclesiæ* to translate Mr Smith, the presentee, from Fintry, of which he was the minister, to Kilmarnock, to which he had been nominated. He admitted that there was not enough, even regarded as a translation, to warrant the Assembly in coming to a judgment that Mr Smith should be translated; but there was quite enough to justify a deliverance, that he should not be transported; and accordingly he moved to that effect. This motion was met by an amendment from Dr

Cook, that the dissents and complaints should be dismissed, and the settlement of Mr Smith proceeded in, according to the rules of the Church. Mr Dunlop, in supporting Dr Cunningham's motion, asserted that there was a free discretionary power in the Church, to determine whether a presentee shall be translated or not,—thus maintaining, in effect, that the act, requiring a presbytery to admit the qualified presentee of the legal patron, does not apply in the case of a minister already in a living. The learned member rested his view of the law on the Act of Parliament 1719, anent the *jus devolutum*, in the cases of ministers presented to one living, while holding another, from which they had not been released by ecclesiastical authority. How far he was correct in this view was not, in this case, made the subject of trial in a civil court—both the presentee and patron retiring from the field. In this debate, Mr Dunlop further held the doctrine, that the dissents under the Veto Act did not shut out special objections being offered. Where they were in sufficient number to call for rejection, the case of course terminated; but where, when offered, they did not amount to the requisite majority, special objections might then be offered. If this view of the law was correct, the Veto had just established an additional ordeal, through which presentees must pass before being taken on trials. The cases of Kilmarnock, Fala, and others, as they terminated in the Church courts, attracted comparatively little notice, not having raised the question of jurisdiction; but they clearly showed the spiritual tyranny, which the dominant party in the Church were by this time determined to exercise; and the certain fate that awaited all presentees who did not receive their dogmata of Non-intrusion and Spiritual Independence.

The proceedings of the Assembly 1842 were closed by a measure the most important, as it was, perhaps, one of the most unconstitutional, on which the dominant party had yet ventured. An act was passed, appointing “a Special Commission, with reference to the present difficulties of the Church,” consisting of forty-five ministers and twenty-seven elders, of whom five, three being ministers, were constituted a quorum. The duty assigned to this Commission was to co-operate with the presby-

25.
Special Commission
appointed.

teries, within whose bounds the several parishes lay, in which the collision between the civil and ecclesiastical judicatories had already occurred, and with any others, in which similar circumstances might arise. This Commission was empowered to supersede these presbyteries in all their functions, as it might see fit; and "in the settlement and superintendence of the said parishes, and in making provision for the supply of the ordinances of religion, and the exercise of discipline, and the ordering all ecclesiastical matters therein," it had full authority to do everything which the presbytery of the bounds might do, but for doing which the presbytery might be exposed to hazard; and in the end, in the event of the civil courts interfering, to do and perform what the presbyteries ought, in the case, to have performed." All the ministers of the Church were further instructed to place their services at the disposal of this Commission, who had power to choose their own moderator and clerk, and to meet, upon adjournment, when and where they might deem it expedient.

Whatever powers the ordinary and stated Commissions of a
 26.
 Extraordinary powers. General Assembly might legally possess, they were undisguisedly over-ridden by those that were now conferred upon this Special Commission. The wisdom and foresight of the fathers of the Kirk of Scotland had provided that the stated Commissions—appointed at first under extraordinary circumstances, and to meet extraordinary contingencies—should consist of all the members of Assembly; and that a quorum should be composed of not fewer than twenty-two ministers and eleven elders; while prohibition was distinctly laid upon them against intermeddling with cases not specially remitted to them, or attempting to execute their sentences, even in regard to them, where the same were resisted by parties. By the act now passed, the whole jurisdiction of the Church was thrown into the hands of three ministers and two elders; and a power was given to them over all the ministers of the Church, which no ordinary Commission could take upon itself to exercise. In the Culsalmond case, the question had been gravely raised in the civil courts, and still stood over unadjusted—how far the stated and customary Commissions of the General Assembly were courts known to the law of the land, and to the

decisions of which civil effect must be given ; and there certainly appeared little wisdom, in erecting other ecclesiastical tribunals of a still more doubtful character. The present measure only appeared to proclaim the recklessness with which the dominant ecclesiastical party were now prepared to proceed, in hazarding, and even inviting, every possible collision with the civil power ; and this in the hope, no doubt, that they might the more easily concuss the legislature into a concession of their spiritual demands. It must, however, have been evident to every one, that if the Assembly possessed the power to constitute a Committee with such unlimited authority, as was bestowed in this instance, and from which no appeal to a future Assembly was at least specified, the provision of the law and constitution, that her Majesty, by her Commissioner, shall be present in all Assemblies, to take care that all things are done in order, may be dispensed with. And certainly the audacity, that could have brought forward such a measure, in the presence of the Representative of the Sovereign, was enough to stagger belief. A stronger demonstration could not certainly be demanded of the inefficiency of the political check on ecclesiastical proceedings within the Kirk, as her affairs were now carried on, than that the Crown did not at once interpose its veto on such a Committee as was now appointed. Nothing, indeed, more openly illegal and unconstitutional had ever been attempted, even during the wildest days of presbyterian domination, when the General Assembly gave the law to both the army and the estates of Scotland. At this time the office of Solicitor-General for Scotland was filled by one of the ablest men at the Scottish bar, whose duty it was to wait upon and advise the Lord Commissioner during the sitting of the General Assembly ; and it did not fail to create surprise, in some quarters, that this functionary did not draw his Grace's attention to the illegality of such a Commission as was now constituted. It does not, however, appear that this unconstitutional body ever met, or proceeded to any practical measures.

During the sitting of the Assembly, the Most Noble the Marquis
^{27.} of Bute expressed a very anxious desire to some of
 Lord Bute attempts of to settle the Strath- the leading churchmen on both sides of the questions
 bogie difficulty. then distracting the Church, to bring about a settlement of affairs,

as these questions stood affected by the position which the Strathbogie ministers had taken up ; and in which they were maintained by so large a body of the Moderate clergy and elders. In order to accomplish this, without which it was now manifest, beyond all doubt, that a schism the most lamentable must take place, his lordship put himself in communication with several of the more temperate of the Non-intrusion party ; and proposed, that upon the Strathbogie ministers expressing regret at the consequences that had followed the course which they had pursued, the dominant majority should agree to take off the censures that had been imposed upon them—this being done either by the Assembly itself, then sitting, or by the Commission of August, acting under its authority. In order so far to pave the way for this being carried out, Dr Cook, who had been also applied to by his Grace, agreed to move that this Commission should have the requisite powers to act ; but the whole attempt of Lord Bute was frustrated by the other parties in the transaction refusing to accede to the very reasonable conditions, demanded by the legal advisers of the Strathbogie ministers, to whom the negotiation was communicated, that the terms of the motion to be made for their restoration should be reduced to writing, before they should attach their signatures to the document suggested by the noble Marquis ; that all the preachers who had been sent into their parishes should be withdrawn ; and that the deliverance of the Assembly or Commission restoring them, should terminate the proceedings instituted against them in the civil courts, as well as those raised by themselves against the Church. This attempt of the Marquis of Bute, to remove by far the most formidable barrier in the way of adjusting the Church question, was never made known to the Strathbogie ministers, as a body ; and they stood uncommitted by the preliminary steps then adopted. It might indeed have been foreseen, that the dominant party in the Church would never forego the ground they had taken up, that a grave ecclesiastical offence had been committed by these ministers ; and that acknowledgment of penitence for the offence must precede restoration ; however much the more reasonable among them, like Dr Robert Buchanan of Glasgow, might be disposed to relax on these points ; while, on the other hand, it was evident, that such acknow-

ledgment would never be made by the Strathbogie ministers, after the manner in which they had treated the proposals of Sir George Sinclair and the Dean of Faculty. It thus happened, that, however laudable and well-meant were the exertions of Lord Bute, to bring about a settlement of the Strathbogie question, the only reward that awaited his lordship, was the satisfaction he must have felt, at having done all in his power to heal the unhappy dissensions, that were more and more tearing the Church of Scotland to pieces.

28.
Mr Campbell of
Monzie's Bill. Soon after the rising of the Assembly 1842, the second reading of a bill for the settlement of the Scottish Church question, introduced by the member for Argyleshire, came before the House of Commons. This bill was founded on the Veto Act of the Church, and, in fact, proposed little else than the legalisation of that ecclesiastical statute. No opposition had been offered by Sir Robert Peel, then at the head of her Majesty's government, to the introduction of this bill; and, at his request, the honourable mover—Mr Campbell of Monzie—had put off the second reading, until after the rising of the General Assembly. But when the discussion at this stage of the measure was about to take place, it was notified by the Speaker of the House that, as the bill affected the rights and prerogatives of the crown, as patron of church livings in Scotland, the concurrence of her Majesty was necessary to its further procedure; and, this being withheld, the bill was consequently withdrawn.

29.
Proceeding in
Civil Courts. An action, which had been brought by this time in the Court of Session, by the ministers under alleged suspension and deposition, to have this spiritual sentence quashed and set aside, having been conjoined with another action, brought by the Church herself, to set aside the sentences of the Lord Ordinary, suspending and interdicting execution of the sentence of the ecclesiastical, came at length to be heard. The parties, cited to appear in the action at the instance of the Strathbogie ministers, were the Moderator of the General Assembly, which had passed the sentence of deposition, the principal and assistant clerks, the Procurator, and the agent of the Church, as representing the Church. Preliminary pleas were put in to this action, involving

points of very great importance in the questions which had arisen, and were now wellnigh overturning the Establishment. It was pleaded, first, that the Court of Session had no jurisdiction in the premises; and, secondly, that the Moderator and office-bearers of the Assembly were incompetently called. Both of these pleas were overruled, and the case was then gone into upon its merits—the Church appearing, as a party, represented by the Moderator, clerks, and Procurator of the Church—the judgment on the preliminary pleas of exemption having found, that it was incompetent to call the agent as a party. Judgment was pronounced upon the merits against the Church; and the sentence of deposition against the Strathbogie ministers was set aside and reduced, both as to ecclesiastical and civil effects. From this judgment, which passed on the 24th October 1842, no appeal was taken to the House of Lords.

The suspension from their judicial functions in presbyteries, synods, and general assemblies, of no fewer than
 30.
 Alarm created. seven ministers, because they had received the Sacrament of the Supper at the hands of the Strathbogie clergymen, since their alleged suspension and deposition, did not fail to excite considerable alarm among the Moderate party of the Church, and bespoke a spiritual tyranny which in due time might extend to all the laity, who should receive religious ordinances from the same hands. Of this grossly illegal and tyrannical proceeding on the part of the Assembly, one of the suspended parties took immediate steps to complain, by petition, to the House of Lords; and the Duke of Richmond undertook to present and support the petition, which was accordingly placed in his hands. Circumstances, however, occurred to render the presentation of this memorial unnecessary. The measures, then pursuing by the dominant faction, were conducting directly, and, in the opinion of some of her Majesty's government, more expediently, to the desiderated issue. It was also thought advisable, that the result of the action, then in the Court of Session, for the reduction of the sentence of deposition pronounced upon the Strathbogie ministers, should be ascertained, before any further steps were taken in bringing the tyranny of the Church under the notice of the House of Lords.

Should this action terminate in the sentence of deposition being sustained as legal and constitutional, the ecclesiastical punishment of the brethren who had sympathised with the Strathbogie clergymen, so far as to receive religious ordinances at their hands, could form no ground of reasonable complaint, as in itself illegal; and hence, also, was urged the propriety of abiding the result of this action, before taking any other steps. By the time this result was known, the dominant party had taken their last stand at their celebrated Convocation; and it was manifest that, on the reception of their next and final appeal to the legislature, would depend the fate of the whole Moderate party in the Church—the aiders and abettors of the Strathbogie brethren in their alleged contumacy and rebellion against her edicts; and, under these circumstances, the proposed petition to the House of Lords, complaining of the suspension of the ministers, who had sympathised with the Strathbogie clergymen in yielding obedience to the law, as pronounced by that house, was withheld.

It was noticed, at the time, as somewhat remarkable, that out of
 31. nearly seventy ministers who had assisted the
 Arbitrary selec- Strathbogie brethren in their pulpits, since their
 tion. suspension and deposition by the Assembly, only ten should have been selected for discipline; and this was accounted the more singular, that, among those, who were permitted to go unnoticed, were to be found the names of several of the most leading men among the Moderates. In explanation, it was urged that it was a lesser crime to preach from the pulpits of the deposed brethren, and thus to minister at least to the spiritual wants of their flocks, than to receive the holy Communion from their hands; and such only as had carried their assistance so far were selected for censure.

But startling as was the suspension of the sympathising ministers,
 32. it was cast into the shade by the sentence of deposi-
 Case of Mr Wilson. tion, passed by the Assembly upon Mr David Wilson, the minister of Stranracar, for no other offence than having applied to the civil courts, to protect him against the alleged tyranny and oppression of the ecclesiastical. This gentleman had been accused by a few of his congregation, with whose request, that he would accept of an assistant and successor, he had seen

proper not to comply, of "fraudulent and reckless extravagance in the contraction of debts;"—debts, for which he had some time before made a composition with his creditors, and obtained his discharge. The parties preferring this accusation had been directed, by the Presbytery, to serve Mr Wilson with a libel in due form; they declined to take this step; and upon this the reverend Presbytery itself resolved, by a majority, to become libellers. Against this resolution Mr Wilson appealed to the Synod of Galloway, by whom the Presbytery were instructed to sist all proceedings *in hoc statu*; and to bring up to a future meeting of Synod all the parties and documents in the cause. In the face of this injunction from the Synod, the Presbytery of Stranraer persisted in going on with the libel, which they accordingly served upon Mr Wilson; who, in his turn, applied to the Court of Session for interdict on various grounds of incompetency in their procedure, but chiefly on the illegal constitution of the Presbytery, in consequence of *quoad sacra* ministers having seats within it. This step on the part of Mr Wilson was reported to the General Assembly, and went up along with the appeal taken by the Presbytery against the Synod's deliverance. Mr Wilson was duly summoned to appear at the bar of the Assembly; and having judicially admitted, that he had applied for and obtained an interdict against the Presbytery, he was summarily deposed from the office of the holy ministry!—the sentence of deposition having no reference whatever to the libel which had been served upon him; but resting on the distinctly avowed ground that, in a matter ecclesiastical, he had appealed to the civil magistrate so far as to seek and obtain interdict. The deliverance of the Assembly, in this case, opened the eyes of not a few, who had hitherto been blind to the monstrous claims now again set up by the Church of Scotland; and so far, certainly, did these proceedings cast the question of Non-intrusion into the shade. The country was now presented with the spectacle of a minister of the Established Church being deposed, and degraded from his spiritual functions by the General Assembly, for no other even alleged offence, than exercising his right, as a British subject, to apply to the court competent to grant him redress in a matter where he felt himself to be aggrieved—for no other crime than

complaining of an assumption of power, on the part of the Church, worthy of the darkest days of Popery; and which, once admitted as vested in the ecclesiastical courts of Scotland, and alike the civil and religious liberties of the lieges are laid prostrate at their feet. Against this sentence of deposition of the Assembly 1842, Mr Wilson protested for all remeid-at-law, and, on application, obtained *interdict* against its execution from the Court of Session.

This judicial proceeding on the part of the court was represented, ^{33.} and that in memorials to the Crown itself, and to Civil proceedings misrep-
resented. parliament, as shielding the clerical "swindler" from the justly incurred censures of the Kirk! and in this manner was basely insinuated guilt, where only an unsupported charge existed, and where the presumption rested, alike in law and in Christian charity, that the party accused was innocent. It was, indeed, high time for every minister of the Church of Scotland to take alarm, when the brother who called in question the right of the Church courts, as now constituted, to bring him to discipline, was on this very account held up to the country as guilty of moral delinquencies, subjecting him to the most degrading punishment.

The case of the minister of Cambusnethan, which arose out of ^{34.} the powers usurped by the Church, in erecting *quoad*
Cambusnethan case. *sacra* parishes and giving seats in presbyteries to their ministers, was again brought before the Assembly. This case had been so far disposed of by a former Assembly, which had remitted to the presbytery of Hamilton to follow up the steps consequent upon their having found Mr Livingstone guilty of the charges brought against him. On their proceeding to this duty, Mr Livingstone appeared before them, declining their jurisdiction, and intimating that he had raised an action of reduction of all their proceedings in the civil courts, and had by this time obtained an interdict from these courts, inhibiting all Church judicatories from proceeding against him until the question which he had raised on the legal competency of these judicatories, as now constituted, to take any steps in the matter, should be decided, one way or another, by the Court of Session. In these circumstances the presbytery applied for advice to the General Assembly. The steps

that had been taken by Mr Livingstone were stated by his counsel, who appeared along with himself at the bar, and who declined entering into any discussion of the merits of the case—not admitting the Church courts to have jurisdiction in the matter. When the case was taken up by the Assembly, it was moved by Dr Cunningham, that Mr Livingstone should be deposed from the holy office of the ministry. The question which, according to him, the Assembly was called on to decide, was—whether they should allow the legal proceedings, that had taken place, to stand in the way of the Assembly deposing Mr Livingstone; and this question, said Dr Cunningham, the Assembly “has already answered in the abstract, and in particular cases. It has determined that the interdicts of a civil court shall be held as of no effect whatever, the only notice we take of them being to disregard them, and to show them that we despise them.” His view of the Church’s duty, in the matter of such inhibitions, was “to disregard and trample them under her feet.” This was certainly bold and daring language within the walls of a Church established by law; but it had at least the merit of recommending to the Assembly a course of conduct consistent with all that had hitherto been done, when similar points of jurisdiction had been raised; and if it was not met, on the other side of the house, by a motion, opposing the contempt here openly thrown upon the process of the law, competently and constitutionally put forth, this may be ascribed to the very revolting features of the case, out of which the question had more immediately arisen. When the same case was again brought before the Assembly 1843, after the secession of Dr Cunningham and his friends from the Church, its disposal evinced greater respect towards the civil courts and their edicts, than was at this time manifested.

A vacancy had occurred in one of the parishes within the presbytery of Strathbogie, subsequent to the alleged suspension and deposition of the majority of that reverend body; and it had been filled up, on a presentation from the Duke of Richmond, by the deposed brethren acting as the presbytery. The Rev. Mr Duguid, who had in this manner been ordained and inducted into Glass, now appeared at the bar of the Assembly, on a petition and complaint by several elders and parishioners, com-

35.
Settlement of
Glass.

municants within that parish. He was heard by his counsel; and his statement was very briefly confined to the allegation, that the deposition of the parties, admitting him to the cure and benefice of Glass, was null and void; and that, consequently, his induction by these parties vested him in all the *status* and privileges of the minister of Glass. By this time cases of this kind were very summarily disposed of. Mr Dunlop moved, and was seconded, that Mr Duguid's settlement should be declared null and void *ab initio*; and the Assembly, without a vote, adopted the motion;—Dr Cook and others entering a dissent. The motion of the learned member further proceeded to find that, in respect of Mr Duguid having taken ordination from the hands of deposed ministers, he should be deprived of his license as a preacher of the gospel, and declared incapable of accepting of a Call from any congregation, or of being presented to any charge; and the petition of the parishioners, that spiritual provision should be made for the parish, was reserved for future consideration.

The settlement of Mr Middleton in Culsalmond was taken up by the Assembly, on an appeal from a deliverance of the synod of Aberdeen. A complaint had been brought up to that very reverend body against the proceedings of the presbytery of Garioch, when it was ruled, on a division of sixty-nine to fifty, that any interference with Mr Middleton's settlement could neither be consistent with justice, nor tend to edification; and that the appeal was incompetent and inconsequential, as resting on the confessedly illegal ground of the Veto Act. Against this judgment appeals and complaints had been taken; and in this shape the case was brought before the Assembly. In the debate, which took place on this occasion, Dr Cook admitted that, if the proceedings of the presbytery of Garioch could have been regarded as ruling, that the people in the settlement of a minister can offer objections only at the return of the edict on induction, he could not have supported them, or sustained the sentence of the synod of Aberdeen. Had not the objections which the people of Culsalmond offered been accompanied with a reservation that, if unsubstantiated, they would still fall back upon the Veto, he would have agreed that justice had not been done to them by the presbytery

^{36.}
Culsalmond settle-
ment.

and synod; but they had themselves removed all the difficulties he was at first disposed to feel, and he had no hesitation in affirming the sentence of the synod, so far as Mr Middleton's settlement was concerned.

Mr Dunlop contended, that it was enough to enable the Assembly to reach the presentee as well as the presbytery, that he had lent himself to a violation of the express law of the Church, and was not, therefore, fit to be the minister of Culsalmond; and he moved accordingly, that the complaints and appeals against the sentences of the presbytery of Garioch should be sustained, and these sentences reversed; that the settlement of Mr Middleton should be rescinded and made void; and that the presentee in this case had, by his conduct, disqualified himself as minister of the parish of Culsalmond; reserving consideration of further proceedings in the case.

When this case was before the Commission of November 1841, a series of resolutions had been moved, as stated, in which the doctrine was held that, except at the induction, and on the return of the edict at that stage of the settlement, the people had no right to offer objections, save in the shape of libel, which was competent at all times and at all stages. This doctrine was opposed to the declaratory act of Dr Cook, and to the opinion still held by this high authority. But when the Culsalmond case was before the Court of Session, it had been sanctioned by the majority of that court. The Veto Act of 1834, while enforced, had suspended all discussion on this point within the Church; and the Scotch Benefices Act of 1843 has now settled, by statute, that objections may be offered at the moderation of the Call.

A motion, made by Professor Alexander of St Andrews, to reduce the settlement of Mr Middleton, and send the case back to the presbytery to receive the special objections that had been offered, was seconded by Mr Tait of Kirkliston; when a vote being taken on this proposal, as opposed to that of Dr Cook, two hundred and fourteen supported the motion of Dr Cook, and eight the motion of the learned professor. The Assembly was not divided on the motion of Mr Dunlop, which was allowed to pass without a vote.

The further consideration of this case, after the sentence now pronounced, had been reserved; and it was taken up by the Commission, which sat immediately on the rising of the Assembly. The conduct of the presbytery of Garioch in settling Mr Middleton was charged as a violation of the constitution of the Church, and as casting disrespect upon their ecclesiastical superiors; and as the Assembly had, by their former judgment, decided that this conduct was a malversation of office, they were now called upon for their defence. They had to meet at once the charge of having violated the Veto Act, and the general law of the Church, in the matter of receiving special objections against a presentee. Nothing could more clearly demonstrate the recklessness of all judicial procedure, and all regard to the forms of justice, than the proceedings now adopted by the Commission. No parties competent to complain against the presbytery of Garioch had appeared; no specific charge against which they could defend themselves had been made; and the whole scene exhibited a display of ecclesiastical tyranny, calculated to excite at once indignation and alarm. Nor were these proceedings less oppressive and unjust towards the presbytery of Garioch, than they were disrespectful to, and in open contempt of, the authority and jurisdiction of the synod of Aberdeen. That very reverend body had, on appeal, affirmed all the proceedings in the court below; and it was manifest that, if these proceedings were of the nature now alleged, it was the synod of Aberdeen, not the presbytery of Garioch, that ought to have been at the bar of the Commission. These obvious objections to the course proposed were, however, overruled by the majority, when the members of the presbytery gave in a statement, explaining and justifying their proceedings. On this statement having been heard, it was moved that the Commission should find the proceedings of the presbytery irregular, and deserving of censure; and that a Committee should be appointed to deal with them, and to report to the August Commission; and that they should be cited, *apud acta*, to appear before that Commission.

These proceedings were of a nature calculated to produce the greatest astonishment and alarm, and were evidently intended, if possible, to strike awe into the Moderate

40.
Presbytery of Garioch charged.
41.
Extraordinary proceedings.

rauks, now that the majority were approaching the precipice, to which they had all along been hurrying on the Church. Had the charge been well founded, that the presbytery of Garioch had disregarded the act 1732, authorising appeals against the sentences of the lower courts, as stopping procedure until disposed of by the higher, their conduct amounted only to an error of judgment; and to propose proceeding, on such grounds, to visit them with a libel, and the consequent spiritual censures that might be incurred, was an unheard-of, harsh, and unbrotherly course. To have even gone so far, as was at this time suggested by Dr Hill, as to rebuke and warn the presbytery, would have been a stretch of jurisdiction, even in the General Assembly itself, of a most dangerous character. It is needless, however, to add, that the motion of Mr Dunlop was adopted without a vote; several members of the Commission entering a dissent; and Mr Bisset, for himself and the other members of the presbytery of Garioch, protesting for all remeid at law,—in other words, appealing to the *refugium* offered by the civil courts to all who might regard themselves as oppressed by the ecclesiastical.

After the Commission had disposed of the presbytery of Garioch in the manner now narrated, the case of Mr Middleton, the presentee to Culsalmond, was then taken up; and this gentleman was also called, in the same summary and tyrannical manner, to explain his conduct and defend himself. Mr Middleton had, by the former sentence of the Assembly, been severely censured, in having been found disqualified to be the minister of Culsalmond; but this, it now appeared, was not enough to vindicate the authority of the Church, and it was moved by Dr Cunningham, that he should be further discharged from exercising his ministerial functions within the parish of Culsalmond; that a committee, as in the case of the presbytery, should be appointed to deal with him; and that he should be cited, *apud acta*, to appear at the August Commission.

The judgment of the House of Lords, in the Auchterarder case, as it had been before them in 1839-40, on appeal by the Church herself from the Court of Session, had declared it to be the duty of that presbytery to take on trials the presentee of Lord Kinnoul. After this judgment was

42.
Mr Middleton.
43.
Action of Damages
in the Auchterar-
der Case.

given by the House of Lords, the Lord Ordinary, in the court below, pronounced a further interlocutor, by which he decerned, that the Presbytery of Auchterarder were still bound to take trial of Mr Young's qualifications. This interlocutor was duly served upon the presbytery, and, on a vote, that reverend body refused to take the presentee on trials—so far, at least, as to refer the matter to the General Assembly. Upon this, the patron and presentee did not see proper to appeal, as they might have done, to the supreme Church courts, knowing well the reception such an appeal would experience. They instituted further proceedings in the Court of Session, to obtain compensation in damages against the presbytery; and the court, by a majority, found that they were entitled to the same. This interlocutor was appealed from by the presbytery to the House of Lords, when the judgment of the Court of Session was unanimously affirmed. This was, without all doubt, the most important decision to which the civil courts had yet come in the Scottish Church question. Hitherto it had been held by the Non-intrusionists, that refusal by the Church courts to receive and admit the qualified minister, could only lead to the retaining of the stipend in the hands of the patron—to the disjoining, in short, of the fruits of the benefice from the cure of souls: a result admitted on all hands to be a very serious evil, but one to which the Church was ready to submit, rather than do violence to her own conscience; and under which she held, that she might still remain the Established Church, recognised and upheld by law. The present decision placed the matter in a very different view, and utterly repudiated the basis of relationship between the Church and State, which the General Assembly of 1838 had pledged itself at all hazards to maintain. It was now laid down, as the rule of law applicable to the case, that where a person has an important duty to perform, he is bound to discharge it; and if he refuse to do so, to the hurt and injury of another party, that party has an action of damages against him. The argument or defence, that the presbytery were acting judicially, and therefore that, although in error, no action could be maintained against them, was regarded by the Lord Chancellor, Lyndhurst, as involving a general principle not to be disputed; and if the presbytery had admitted Mr Young to trials,

and found him not qualified, no action could have been brought against them, although the party rejected might have sustained detriment. But in the present case the presbytery had not to decide as judges, but to act ministerially, as the law directed. Neither, according to his lordship, could the argument be listened to, that the action ought to have been brought against the corporate body, the presbytery, and not against the individual defenders. It was, he said, the individuals who had done the wrong; they had, by their votes, prevented Mr Young from being taken on trials, and, as torts are joint and several, so were the members of the presbytery individually subject to an action.

Lord Brougham concurred entirely in opinion with the Lord Chancellor; but wished to guard himself against
 44.
 Lord Brougham. admitting that, had the presbytery taken Mr Young on trials, and then rejected him, they would have acted judicially, and have been protected. He believed the Lord Chancellor, in laying down the judicial rule or principle as applicable here, meant no more than to say, that the question not being before the house, it would, for aught that was known, be an argument competent to the presbytery in the case supposed under it—that of having taken the presentee on trials. The former judgment of the House of Lords did not, his lordship allowed, directly order the presbytery to take Mr Young on trials; but it declared that they were bound to do so; and the conclusion of the summons in the present case was for damages, in respect of injury sustained, by the defenders still refusing to discharge their duty “in terms of the judgment.” The conclusions were consequently sufficient, although referring to a judgment declaratory, and not mandatory; and although they did not assume any command in the judgment libelled on. The presentee did not come to require execution of a mandatory decree. He complained of a breach of duty on the part of the presbytery, from which he suffered injury; and he did all that was requisite to sustain his action against the members individually. He—Lord Brougham—maintained, that the former judgment libelled on, being a judgment between the very same parties again at the bar of the house, was, in fact, a judgment in the cause; but had it been a judgment between other parties, it

would have been of the most binding force. He held also that, admitting the further defence set up, that the former judgment was against the presbytery in its corporate capacity, and therefore the present action could not be maintained against them as individuals, it was still unavailing, at least as against the patron, who rested in the general breach of duty. But it was equally so, he said, as against the presentee, inasmuch as the interlocutor of the Lord Ordinary, not appealed from, had expressly found, that the individual members were bound to have taken Mr Young on trials. In regard to the kind of duty laid on the presbytery, there were exceptions, he admitted, to the general rule that, where a party has a duty to perform, and does not discharge it, damages must be due to those who suffer from his wrong-doing. The legislature, of course, could do no wrong; and, by consequence, its branches, the superior courts of general jurisdiction, were subject to the same exemption; neither were inferior courts, clothed with judicial functions, liable in damages for error committed. But where ministerial duties were to be performed, not judicial functions exercised, every body, whatever be its name, and whatever judicial functions it may otherwise have, is bound to obey, and liable for the consequences of disobedience. In the present case, no question as to judicial immunities could arise, for the presbytery had refused to go into the judicial province at all; and in the matter of taking on trials, the law had decided, that they as little had any judicial duties to discharge, as they had a discretionary power in their performance. The very terms of the judgment appealed from negatived the taking on trials to be a judicial act, and of themselves set aside the defence rested on this ground. Extreme cases had been put in the argument from the bar; and it had been asked, if it was ever heard of, that a judge was sued for not going into court to try a cause? But even for this refusal to discharge a duty laid upon him there was a remedy in the removal of the judge. But this remedy, as against the presbytery, was manifestly worthless. The synod and General Assembly, who might take cognisance of the presbytery's conduct, must be held, by those who argued in this manner, to be as little responsible to the municipal law as the presbytery itself; and, by those who set up this defence, it must necessarily be held, that the

three branches of the legislature itself could not remove the offending presbytery, as they could the delinquent judge. "Here, then," said his lordship, "would be a complete case of *imperium in imperio*; of bodies existing in the country, and exercising important functions—functions nearly affecting the civil and patrimonial rights of the subject—and yet not placed under any control of the law, or rendering any obedience to those intrusted with the office of administering it. Nor," added he, "must it ever be forgotten, that to this conclusion the whole arguments of these Church courts lead; that this is the very claim which they set up, more or less covertly, as it suits the different stages of their contention; that, more or less concealed from our view, this is the doctrine, which pervades their whole reasoning."

But a more apposite analogy might be found, said Lord
 45.
 Analogy of the
 Bishop's power. Brougham, in the law and practice in other quarters, than the province of the civil judge. The bishop in the Church of England, who comes the nearest in place and functions to the Scottish presbytery, might, he said, in the exercise of his very high judicial functions, be prohibited by the temporal courts; and, if he persist, might be punished by attachment or imprisonment. The bishop could not set up the defence that, on receiving an inhibition, it was his province to determine whether or not he should obey it. Yet this was, in fact, the defence set up by the presbytery in this action. They held, that they were entitled to proceed, notwithstanding the inhibition, because they had judicially decided that they had jurisdiction to this effect! As to the discretion of the presbytery in conducting the trials, he (Lord Brougham) held, that they had nothing at present to do with this matter. But it had been ruled, that a bishop might, by *mandamus*, be ordered to inquire and examine, while the grounds, on which he might refuse to license, were beyond all review or control by the civil courts; and he held the case of the presbytery to be so much weaker than that of the bishop, that it might perhaps be found, that the presbytery had no such absolute discretion as the ordinary or the visitor, in the matter of examination and inquiry itself, when at length entered into. The defence that, the presbytery being a corporate body, its individual members were

not answerable for its acts of misfeasance or nonfeasance, appeared to his lordship of no weight whatever; and was set aside by the simple consideration, suggested by the common sense of the matter, that if they were not answerable, no remedy remained for those who suffered injury at their hands, and thus everything like good government and social order would be outraged. As to the charge, that the civil courts were outraging the consciences of the Church courts, he had only to notice that, in the present pleadings, this had been abstained from, the answer to it being so plain and obvious—namely, that those who found obedience to the law of the land repugnant to their conscientious scruples, may release themselves from its obligations, and thus escape from its pressure. But when it was said that the legislature, which acknowledges the divine origin of the Church's powers, could not enforce their exercise, by the sanction of temporal penalties, without alike profanity and absurdity, he must observe, that one of the most ordinary exercises of legislative, executive, and judicial powers, is to compel men to employ the faculties which they have received from heaven; while, at all events, it was the act of ordination, not the preparatory process of trial, which the Church claims to have received from above. But, said his lordship in conclusion, “when these men seek to excuse themselves, to palliate, or rather to deny their contumacy, by asserting that they only desired to consult the General Assembly, their ecclesiastical superiors, they have fallen into a much more practical error—an error wearing a more sinister aspect, come of more base parentage, and fruitful of more dangerous offspring. ‘We had, say they, ‘on the one hand, the opinion of the civil courts; on the other, the positive injunctions of our ecclesiastical superiors, and all we did was to refer to them for advice.’ Advice on what point? In what difficulty? touching what nice and perplexed matter, involved in what controversy was it, that they required such a resort for light and help? No less nice, and difficult, and perplexing a question, than whether they were to perform the duty in terms declared to be incumbent on them—declared by the supreme tribunals of the country;—or to follow the advice of other persons, who had set themselves in opposition to these tribunals, and had commanded or enjoined them to disobey their decrees. And to

whom do they resort for advice, in this emergency, for a solution of this difficulty? Not to an impartial and unbiassed adviser, whose counsels it would be safe to follow, but to the party whence had proceeded the unwholesome advice to disobey the law." "It is fit," said the noble and learned lord with peculiar and striking emphasis—"it is fit, that these men learn at length the lesson of obedience to the tribunals which have been appointed over them; a lesson which all others have long acquired, and which they, as teaching it, should also practise. It is just, that they should make reparation to those whom their breach of a plain duty has injured. The duty is not doubtful. The courts have laid it down. Their failure is not a mistaken opinion; their fault is not an error of judgment. They knew what they ought to have done, and they refused to do it. The penalty of their transgression is to make compensation to those whom they have injured by their pertinacious refusal to perform their duty, and yield obedience to the law."

The reasoning of Lord Brougham, and the rules of law which he brought to bear upon the Auchterarder case, as it came before the House of Lords, would have been, it is clear, equally applicable to that of the Strathbogie ministers, had it ever reached the same stage. The seven suspended ministers had been repeatedly held up, as running before the demands of the law, in their violation of the edicts of the Church; and by not a few among the Moderate party in the Assembly, had they been regarded as culpable, in not having sought the advice of their ecclesiastical superiors, when the process of the civil court was served upon them. If Lord Brougham is to be received as a sound interpreter of the law, and of the line of duty required by it in the circumstances, these ministers paid a becoming respect to its requirements; at the same time that they exhibited a firm and honest consistency of principle, when they declined seeking advice from the very parties who had punished them for yielding this respect.

Lord Cottenham and Lord Campbell concurred with the Lord Chancellor and Lord Brougham, in affirming the interlocutor of the Court of Session. The former of these learned and noble lords stated, that he had found no diffi-

46.
Application of
these rules to the
Strathbogie case.

47.
Lord Cottenham,
and Lord Campbell.

culty whatever, as to any of the propositions raised by the appellants in the action. The interlocutor in the Auchterarder case had shut out the ground of defence, that the presbytery was acting judicially, and not liable to damages even if in error ; and to him the argument, that the members were not individually responsible, was equally untenable. There was, consequently, a wrong sustained, by the refusal of a body of men, individually bound to have discharged a duty laid upon them by law, and called upon to act ministerially, and not judicially ; and consequently damages were justly due to the parties suffering by their refusal. Lord Campbell, in delivering his judgment, went, at some length, into the history of the case, and came, as he said, to the clear conclusion, that both patron and presentee had sustained an injury, for which compensation was due. He held that, if the presbytery had adjudged that Mr Young was *minus sufficiens in literaturá*, or that he was heterodox in doctrine, or immoral in his conduct, or unfitted, from personal defect, to serve the cure, no action could have lain against them, although injury would have resulted to the presentee from his rejection. But they had never got beyond the stage in the process of settlement, where their acts were merely ministerial ; and because there lay beyond this a province of the judicial character, this did not screen them in the present deliverance, to which they had come, and to which a very different rule applied. It was clear, he said, that everything depended, therefore, on the quality of the act ; and he held the illustration between a presbytery taking on trials, and the archdeacon or bishop inducting into a living, to be perfectly applicable. Both acted ministerially, and, acting wrongfully, were liable in consequences. His lordship further illustrated his view of the case by supposing that, in regard to the admission of a judge to the bench of the Court of Session, that court should make a rule, that no lord probationer should be admitted, if a majority of writers and advocates should dissent from his admission ; and that after the House of Lords, on complaint against this rule as illegal, had declared that to act upon it was a violation of duty, and contrary to the statute, they should still refuse to receive the lord-probationer ;—he maintained that this would not be a whit stronger case of injury and illegality, than that of the Church in the present

action. It had, indeed, been said, that this was an interference with the right of the Church to confer holy orders. He deprecated most strongly any attempt of the civil court, to pronounce who is qualified, or not qualified, to preach and to dispense sacraments ; but he had no doubt of the civil court's right, to compel the duty to be done by those on whom the law had laid it. In like manner, he said, when the ecclesiastical court is proceeding within its province in the matter of deprivation, the civil cannot interfere. But they will interfere, and grant inhibition, if it is shown to them, that the ecclesiastical judicatory is proceeding to deprive for that which is not "just cause" of deprivation. But it had been argued that this was a case of *injuria absque damno*, in respect that the patron is indemnified by the vacant stipend ; and that the presentee, before induction, has neither *jus in re* nor *jus ad rem*. The former question of the patron's indemnification he did not notice any farther than to say, that the boon of the vacant stipend was never given to him as a satisfaction for the wrongful act of the presbytery in violating his patronate rights, and could not, therefore, be the measure of the damage done to him ; and, as to the presentee, it was to be kept in mind that he was debarred from his *status* as parish minister, to which it is to be presumed that, upon examination, he might be found entitled, as well as from the profits of the living. But he held clearly that the Church courts cannot separate the temporalities from the spiritual duties, as the appellants seemed to imagine. They cannot renounce the fruits of the benefice, that they may retain the spiritual jurisdiction, and still remain the Establishment of the State. Both must concur and unite, in conferring on them this character. The last defence to which he adverted was, that the appellants were bound by the Veto law of 1834, because they had come under the most solemn obligations to conform themselves to the discipline of the Church, and the authority of its several judicatures. It was impossible, said his lordship, not to respect conscientious motives, however erroneous ; but it was his duty to say, that all oaths of obedience to superiors implied the condition, that their demands were lawful. "From the history of Thomas-à-Becket," added he, "till now, there has been no such pretension, in any part of

this island, as that ecclesiastics, in the exertion of a *liberum arbitrium*, inherent in them, are, of their own authority, conclusively to define and declare their own power and jurisdiction; and that no civil tribunal can call in question the validity of the acts or proceedings of any ecclesiastical court." "I am not aware," continued his lordship, "that the Roman Catholic church in Scotland claimed a higher exemption from civil authority, than the Roman Catholic church in England; or that the founders of the Reformed Presbyterian church in Scotland claimed a higher exemption from civil authority, than the Roman Catholic Church, to which it succeeded." He would answer the defence, grounded on the hardship of the appellants being held liable to actions, for acting according to their consciences, by at once stating his opinion, that "nothing can be more dangerous, than permitting the obligation to obey a law to depend upon the opinion entertained by the individual in regard to the propriety of that law. If there are any laws which they believe stand in the way of statutory reform in the Church, let them apply to parliament for the repeal or modification of these laws. But a defiance of the courts of justice, and of the legislature, must inevitably lead to confusion and mischief; and a perseverance in such ill-advised councils must either end in the total subversion of the Establishment, or in a schism that would for ages impair its respectability and usefulness."

The judgment of the Court of Session, affirmed by the House of Lords, that a presbytery, in refusing to take a presentee on trials, in consequence of the dissent of the congregation, were liable in damages to that presentee, and to the patron nominating him, was not the only important interlocutor issuing, at this time, from the same authority, and violating, as it was held and alleged, the spiritual independence of the Church. The question was also raised in the Auchterarder case, whether, in the event of the majority of a presbytery refusing to discharge a duty laid upon the whole body, acting ministerially, it was not competent for the minority, willing to proceed in this duty, to do so, *non obstante* the objections and inhibitions of the majority. This question, manifestly involving the very essentials of a spiritual jurisdiction independent of the civil, was decided in the affirmative;

48.
Right of the minority in a church court.

and the minority of the presbytery of Auchterarder were held entitled and bound to proceed in the trials, and, consequently, in the induction of Mr Young, if found qualified. The party interested in this case did not, however, enforce his rights over the minority to the extent to which the civil court had found that he possessed them; and on the secession taking place in 1843, Mr Young was duly inducted into the living of Auchterarder.

The decision, to which the House of Lords came upon the
 49. Auchterarder damages question, could scarcely
 Importance of the decision in the Auchterarder case. have been unanticipated by the Church; and it must have been foreseen by her leaders, that the door was about to be effectually shut against any prospect of a settlement of the questions that had arisen, until the majority, now proclaiming her mind, should be prepared to surrender her claims to spiritual independence, as well as to rescind the Veto, and give up the fundamental principle of non-intrusion, as interpreted by them. They could not possibly entertain the hope, that the legislature would interfere, to the extent of declaring that, when the ecclesiastical courts of Scotland refuse, in the exercise of their discretion, to carry into effect the obligations laid upon them by the statutes establishing and endowing that Church, the civil tribunals shall have no right, upon complaint of injury sustained by this refusal, to interfere to redress the wrong. Such an expectation was too preposterous and absurd to be thought of; but not less singular was the attitude assumed by the Reformed Protestant church of Scotland in the middle of the nineteenth century;—doubtless, indeed, the legitimate, however much the unlooked-for, fruit of those principles that once were dominant within her pale, when both the army and the estates acknowledged her supremacy. In former days, the liberties of the kirk were held as consisting in the right of General Assemblies to meet and to deliberate independently of the civil magistrate; in the spiritual privilege of the lowest ecclesiastical judicatory, to call upon the lieges to refuse obedience to the law, when pronounced by them to be in violation of the headship of Christ; and in that of individual pastors, to assail public men and public measures from the pulpit, in whatever language they might see fit, accountable only, *in primâ instantiâ*,

to their ecclesiastical superiors ;—when, in short, the doctrine was thus practically exemplified, that “there are twa kings and twa governments in Scotland.” The same “liberties,” as contended for in 1841-2, just amounted to a dispensing power over existing laws, whenever the Church shall reach the conviction, that it is her duty to disregard them ; and consequently, to the upholding of a right to extinguish civil immunities, acquired under these laws, whenever she shall see fit to do so ! Because the State would not bestow, or continue its endowments under, these conditions, has the Secession, in 1843, of so many ministers from the Establishment taken place. We may venture to foretell, that the day is far distant, which, on such principles, is to witness their restoration to their benefices. If such a day indeed arrive, amidst the many and strange vicissitudes that now meet us at every turn, the light and liberty of the Reformation will have yielded in this, as in other countries, to the darkness and tyranny, which it was fondly believed they had for ever expelled from these highly-favoured islands. But, whatever danger of a “consummation” so deeply to be deplored, may threaten from other quarters, the decision of the House of Lords, in the Auchterarder damages case, gave assurance that the sound principles of Protestantism are cherished in the highest court of justice in the kingdom, and will be upheld with alike vigour and honesty. Within that house there prevailed but one opinion upon the claims which constituted the defence of the Church of Scotland in this action. To the mind of almost every noble lord, learned or unlearned, was presented only the aspect of a most flagrant breach of the law, sheltered by the most barefaced demand of a spiritual jurisdiction, worthy, indeed, of the Council of Trent, but exciting the strongest astonishment when proceeding from the General Assembly. Dr Chalmers and his friends in the Church had long before been warned, that the question of Non-intrusion would slip into that of Spiritual Independence ; and, as the first Auchterarder action and appeal had settled and set at rest the one, as unknown to the law of the land, so did the second still more decidedly dispose of the other. Before this decision, retreat on the part of the Non-intrusionists, without sacrifice of principle, had become impossible ;

it was now equally impossible to remain within the Establishment, and carry out the government and discipline of the Church on principles, that denied her obligation to obey the civil statutes of the land, farther than her own convictions of duty dictated. From this hour, therefore, secession must have been seen as inevitable.

On looking back to the transactions of these days, it is not perhaps easy to understand why the Church, in the case of the presentee to Auchterarder, did not so far obey the second mandate of the Court of Session, as to take him upon trials, after the first had been affirmed by the House of Lords. She saw fit, however, to pursue a very different course; and permitted the second interlocutor to become the final judgment of the law, entering no appeal against it to the House of Lords. It was clearly within her power, to have directed the presbytery of Auchterarder to have taken Mr Young on trials; and, when they proceeded to judgment on his qualifications, to have found that, although qualified for the ministry in general, he was not "suitable" for the particular parish to which he had been presented. The presbytery would then have been acting *judicially*, and at least might have been protected, if in error, from any damages arising from their judgment. On the question of her inviolability in this case, Lord Lyndhurst and Lord Brougham differed, indeed, in opinion; but it did, at least, admit of doubts, not certainly set at rest by the decisions yet given, how far, under the Act 1567, giving the examination and admission of ministers to the Church courts alone, any judgment issued by them could upon its merits be brought under the review of the civil courts. If it was said, that the question would not arise upon the merits, but upon the Church courts being within the precincts of the statute in reaching these merits, the presbytery had only to proceed, as does the bishop in the Church of England, in similar circumstances, to pronounce a *non idoneus*, without assigning grounds;—thus casting out the civil courts from anything like jurisdiction. It might, no doubt, be asserted, that this would have been giving up the Veto, as it had been enacted by the Church; but it was so far, at least, maintaining the fundamental principle of Non-intrusion. The Church chose, however, to take her stand—apparently with little wisdom, and under

50.
Course to have been
pursued.

no necessity—before she had properly entered on her own peculiar and spiritual province ;—and all that she could complain of, as an act of aggression on the part of the Court of Session, was the compelling her to proceed to the discharge of duties laid upon her by the statute. It could not be pretended, with any truth, that the civil power had interfered with her in the performance of these duties, as she herself might deem best for the interests of the Church and the Christian people of Scotland.

CHAPTER IX.

PREPARATIONS FOR A SECESSION—THE CONVOCATION—FURTHER COMMUNICATIONS WITH GOVERNMENT.

THE reception of the Claim of Right, by the House of Commons,
1.
Preparations to
Secede. decided the conduct of the men then constituting the majority in the Church courts of Scotland; and the most active preparations were henceforward made for seceding from the Establishment. But, long before this Claim had been disposed of, such a contingency as its rejection had been contemplated, and provided for; and the remotest corners of the country, hitherto the most peaceable and undisturbed by the din of the unhappy controversy which had arisen, had been visited by deputations from the central agency in Edinburgh; and that for the express purpose of inducing the people to desert the National Church, should the Non-intrusion and Spiritual Independence now claimed by her be refused by the State. Signatures were sought and obtained to declarations, pledging the subscribers to follow this course, in the event contemplated. A great meeting was held in the West Kirk of Edinburgh, at which resolutions were come to, binding those assembled together to persevere in the course of opposition to the civil courts, which had been determined on, and pledging them to stand or fall together in the prosecution of Non-intrusion and Spiritual Independence. At this meeting, several very violent, almost seditious, speeches were delivered by the leaders of the movement; and a *Covenant*, as it might be called, was prepared and agreed to, the more effectually to secure the objects in view.* This very important document stood up afterwards in judgment against the sincerity and honesty of not a few who, when the hour

* *Vide* Appendix, B.

of trial arrived, flinched from the obligations under which they had come at this meeting; and gave but too much, and, it must be confessed, too justly founded occasion, to the seceders to reproach them with backsliding, when the Church was at length purified from the error into which she had, for a time, been led.

It was thus that every means which zeal and eloquence could furnish were employed, to prepare for the great ^{2.} Peace of the ^{2.} parishes disturbed. Secession now spoken of as almost inevitable. It was not accounted sufficient, that these endeavours should be confined to parishes, where the minister had adopted and inculcated on his flock the doctrines of the dominant majority; but districts of the country where the pastors were pursuing the even tenor of their way, as preachers of that righteousness which alone exalteth a nation, and, amidst the storm that had been raised about the things of time, were, like the good Bishop Leighton of old, preaching a word about those of eternity, were visited by the emissaries of the Non-intrusionists, with the view of enlisting their parishioners on the side of the Church, in her resistance to the civil law. This, in several instances, drew forth the ministers of the parishes thus invaded, to withstand the intruders; and the spectacle of the house divided against itself was exhibited by the Church of Scotland, in a manner far from edifying. Such, moreover, was the zeal and foresight displayed, in preparing for this contemplated Secession, that the self-constituted bodies at Edinburgh, assuming the name and authority of the Church, put themselves in communication with her Missionaries in India, and, intimating to them the probable contingency, called upon them to prepare for making a choice between adherence to the Church, which had originated and fostered the truly Christian scheme, of which they were the appointed instruments, and throwing in their lot with those who were making ready to sacrifice everything for what they held up as the cause of "Christ's crown and kingdom;"—a course of conduct which, had it been pursued by the minority of the clergy, and in opposition to the authority of the dominant party, would doubtless have been regarded and visited as the following of "divisive courses," in violation of the laws of the Church. It is difficult to see how, as measured by these laws, the act should

change its character and complexion when perpetrated by a majority.

Nor were these the only provident measures resorted to. The sus-
 3. tentation of the ministers who should secede, and the
 Provident building of churches for their accommodation, when
 measures. they should have deserted the Establishment, were objects of mani-
 fest and primary importance ; and these were not overlooked. The
 adherents to the cause of Non-intrusion were called upon to open
 their purses towards their accomplishment ; and committees, having
 these objects specially confided to them, were duly organised, and
 entered vigorously on their duties. It will scarcely be believed,
 that the men who, while within the pale of the Establishment, were
 taking these active and open measures for perpetrating a wide and
 extensive Secession from the Church, were the very parties who
 attempted to denounce Dr Cook and his friends as schismatics and
 separatists ; and to threaten them with the highest ecclesiastical
 censures, because they recorded their opinion, in mere reasons of
 dissent, that the course which the majority were pursuing might
 ultimately impose upon the minority the necessity of learning, in
 the proper quarter, which of the sections now dividing the Church
 was to be recognised as the National Institute ! Yet, in these days
 of party zeal and prejudice, could this gross and glaring inconsis-
 tency be overlooked by the adherents of the Non-intrusion section
 of the Assembly ; and the Moderates be held up to the reproach and
 execration of the Church and country, for even contemplating and
 bewailing a course of conduct, for which their opponents were
 openly and exultingly making the most active preparations.

It was obvious, that while the clergy were employed in this not
 4. very creditable crusade against the Church, whose
 Necessity of stronger demon- bread they were at the same moment eating, it
 strations. became them, by some public and solemn act, to
 show, that the course which they were urging upon their flocks
 they were themselves fully prepared to follow. The second deci-
 sion in the Auchterarder case, finding the Church courts, in the
 discharge of their spiritual duties, to be liable in damages to parties
 complaining against them, was also regarded as having at length
 brought matters to that crisis, when the path of duty before the

Church had become plain, and ought to be proclaimed. It was held that the first decision in this celebrated case only proved that the State was acting upon very narrow views of its own duty, and that its conscience had been misled ; but that this decision had done no violence to the conscience of the Church, and had not, therefore, required of her to do more than to protest and expostulate. But, under the last, a very different and sterner line of duty was regarded as lying before her. She was now not only interdicted from doing what she held to be imperative, but compelled to do that which she regarded as sinful. And as many of the clergy did not see, or could not be made to understand, the fatal issues now opening up, it was deemed expedient that they should be enlightened, in the manner most likely to produce uniformity of sentiment and action ; and, accordingly, it was arranged, by the leading men in the Non-intrusion party, that a Convocation of ministers should assemble at Edinburgh, called on the requisition of a large body of the fathers and brethren, who had not hitherto put themselves in the foreground of the battle, and might, therefore, it was thought, meet with more respect from the country, and might give weight to the deliverances of the meeting when it assembled. This Convocation was to be exclusively confined to deliberation, not action, and nothing was practically to result from it, but the ascertaining, with more precision than had as yet been reached, the views of the ministers on the great crisis now at hand. Such an opportunity to consider the perilous situation of the Church, and to offer up prayers to heaven for light and direction in her difficulties and dangers, were objects, having nothing in them at which either a sense of propriety, or a regard to public peace and good order, could revolt. The steps actually taken by the Convocation, before it dismissed, belied the very vague and general character in which it was clothed, upon its being called, in so far as these steps resulted in two separate series of *Resolutions*, of the most practical nature imaginable. The art and tact of the leaders in this movement were perhaps displayed in nothing more clearly, than in the management of this particular part of the drama. There did prevail an apprehension on the part of some, that the proposed convocation had a view to entrap them into some such decisive step as was ultimately adopted ; and

not a few set out for Edinburgh, boasting, that by no such finesse, as was suspected, should they be betrayed into any pledge to relinquish the Establishment. The snare that was laid proved as successful as it was cunningly devised; and it was believed many were entrapped into pledges, of which they never dreamt when they left their homes to attend this celebrated convention. In one great object only did it fail—that of intimidating the government and the legislature into a concession of all that was demanded in the Claim of Right.

Had the circular calling this Convocation together been avowedly
 5. the work, or rather had it borne the signatures, of
 Circular calling the Convocation. the young and fiery spirits of the Church, it might have found but little attention from the body of the clergy. But it came forth as the spontaneous act of a body of the most grave and reverend fathers of the Church, on whom, of course, the responsibility of the measure would rest; and it met, accordingly, with a consideration and respect which it might not otherwise have received. The ruse, however, was too flimsy to pass unnoticed by the country; and it was widely believed, that the great leaders of the Non-intrusion phalanx in Edinburgh were the real contrivers of the plot; while the Non-intrusion press rested not a little of its claims to public attention, on the fact, that the Convocation stood aloof in its very conception from the fiery impetuosity of the younger, and reposed entirely on the wisdom and prudence of the older ministers of the Church.

This celebrated Convocation, which met at length on the 17th
 6. November, and continued sitting until the 24th,
 Convocation meets. was opened with great solemnity by a sermon, preached in St George's Church, Edinburgh, by Dr Chalmers; after which the deliberations commenced in Roxburgh Place Chapel, when this distinguished churchman took the chair. From this Convocation the public at large were strictly excluded; and it was so completely a clerical convention, that even the elders of the Church, who went along with the ministers forming it, in the great questions of Non-intrusion and Spiritual Independence, were not admitted. The meetings were held twice a-day, and were opened and closed with all the formality of a regularly convened assembly—occupying in general, with a very brief interval,

from eleven in the morning until nearly the same hour in the evening.

It afterwards transpired, through the organs of the Non-intrusion party, that, at the opening of the Convocation, some symptoms of impatience and elements of discord did appear, and that the tone of the first evening was fitted to alarm and to humble. Some were afraid, lest, advancing on one side, they "should plunge into some swamp of voluntarism," of which it would appear they then entertained a very great horror; and others were altogether at a loss to see how they were to "escape these swamps," and not be "overwhelmed in the impassable river of civil power." Nothing, however, presented itself for a time, but apparently conflicting views and irreconcilable feelings. The sederunt closed, on a motion by a member, in offering up fervent and solemn prayer to heaven for light and direction amidst their perplexities; and, in the language employed on the occasion, "Satan's advantage was not merely lost and counteracted—it was turned against himself;" and, from the second day forward, the Convocation presented a scene of harmony and peace, which nothing could disturb. There are extant but scanty materials to enable us to understand how this interval was employed; nor is it easy to conjecture by what arguments or appliances so large a body of ecclesiastics could have been brought to the unanimity of sentiment which we are bound to believe ultimately prevailed. The scene, exhibited on this occasion, must be acknowledged to have been without example in any council of the Christian Church, and altogether presented a problem not easily solved—indeed, utterly inexplicable—until we admit, as elements towards its solution, feelings and passions which ought to have been most rigidly excluded from so sacred a conclave. As the Convocation had commenced their sittings, by publicly congregating in St George's Church, so they closed them in a similar manner in Lady Glenorchy's Chapel; where "as a band of sworn brothers they stood up, on the 24th November, to close and seal their work with a hymn of thanksgiving."

It was certainly, as we have noticed, a very singular spectacle that so many ministers should have met and separated, on an occasion embracing at once such holy and

7.
Proceedings of the
Convocation.
8.
Singular spectacle
exhibited.

such selfish objects as the Convocation had in view, without, ultimately, even a single difference of opinion upon one series of the Resolutions then passed, and with really no discordance worth noting on the whole proceedings of the convention. The composition of the meeting, and the tone and temper of the age, forbid us to ascribe to all the members present that high-pitched enthusiasm in a holy cause, which might account for the phenomenon; while we are warranted in believing, that such feelings were worked upon where they existed, and roused where they were dormant, by all imaginable appliances. The whole language employed at this time, by those who were driving their brethren to a secession from the Established Church, affected such a disinterested and purely felt impression, that they were doing God good service, that a conviction of its sincerity might have been forced upon the looker on, who could not be satisfied of its reasonableness, had not the more carnal motives that were at work occasionally broken forth. Enough was every moment transpiring to satisfy the impartial observer of events, that to the few leading men of the movement no other course than that taken by the Convocation presented itself, and no difference of sentiment could, therefore, have been anticipated among them. But the arguments, by which they persuaded the great body of their brethren to adopt their views, who had not committed themselves to the same extent, and whose pride, at least, was not so fully enlisted in carrying out their purposes, are not so easily discernible. From the length of time occupied in Convocation, although it gave to its proceedings the colour of great deliberation, an inference was fairly drawn, that these arguments encountered some difficulty in carrying conviction to those for whose enlightenment they were brought forward; and who, therefore, after all, might have been gained over, not so much by a persuasion in their cogency, as by the belief, at length artfully instilled, that if so large a body of ministers, of such high character, zeal, talent, and popularity, stood firmly together in their demands, no government could, in the end, withhold them.

The deliberations, which had excited no little interest and curi-

9.
Resolutions
adopted.

osity in the public mind, were made known, so far,
in the form of Two Series of Resolutions* to which

* *Vide* Appendix, C.

the Convocation had come. The first series was passed on Saturday the 19th November, and subscribed by four hundred and twenty-seven ministers. In these resolutions, the subscribers declared, that the recent decisions of the civil courts, in the questions which had been brought before them under the Veto law of the Church, and the law of patronage, were generally repugnant to the principles of the Church of Scotland and the consciences of her office-bearers. The first series had reference—not to the first decision in the Auchterarder case, where it was held as ruled by the House of Lords, that if a presentee be rejected by the Church courts, on the ground of the people's aversion, the benefice should be separated from the cure—a judgment which, it may be noticed in passing, the House of Lords never reached ;—but to the second, where it was adjudged, that severe and condign penalties must follow such rejection. Had not the first decision in this case been followed up by the second, the Church would have gone on rejecting, on the ground of the people's dissent, and resting contented with protesting and expostulating, when this was followed by the living being placed in abeyance. Under the one decision, it was said, “the tabernacle of the Establishment might be taken down stake by stake, and the triumph given in this manner to *Voluntaryism* ; but, under the other, *Erastianism* struck a direct blow at the heart of the Church ;” and it was felt that there could, at length, be no paltering, nor compromise, nor submission. Hence, it appeared, that the necessity of the Convocation arose out of the decision of the House of Lords in the Auchterarder Damages Case ; and, in dealing with the first series of Resolutions, which touched the consequent position of the Church, little more than a single day's deliberation sufficed to bring the Convocation to one mind.

The First series of Resolutions is said to have been moved, in
 10.
 First Series of the Convocation, by the Rev. Dr Robert Buchanan
 Resolutions. of Glasgow—the same reverend divine who brought
 forward the celebrated Declaration of Spiritual Independence in
 the Assembly of 1838. On their promulgation, it is understood
 that a number of members exclaimed against their adoption, as
 going beyond the purpose for which the Convocation had been
 held—that of merely considering the steps that ought to be taken ;

and as inevitably leading to the most practical consequences. When the meeting became somewhat warm in the discussion of the point thus raised, a member was ready to move, that a reverend brother should offer up prayer, and invoke aid and light from on high. In this manner the tumult was quelled for a time ; and, it is said, Dr Buchanan took the opportunity of at length assuring the doubting brethren, that there was no design to lead them to any practical acts by the Resolutions proposed ; and that they conveyed no pledge, if agreed to, that such acts would be demanded from them. In this view of the First series of Resolutions, Dr Candlish, who sat by his reverend friend, when reading them, is said so far to have concurred, as to offer nothing in opposition to what Dr Buchanan had stated ; and the first series was subscribed by all present. Two days afterwards, the Second series of Resolutions, pledging the subscribers directly to secede from the Establishment, if their demands were not conceded by the legislature, was brought forward, when a new and greater storm arose—those who had objected to the first now maintaining that they had been deceived. The same means as formerly employed were resorted to of allaying the tempest. It was then contended by Dr Candlish, that it was too late to object to the second series of Resolutions—as those who had signed the former had necessarily incurred the obligation of subscribing the latter, and could not, in good faith or honour, recede. Several members, who did not take this view of the matter, refused to adhibit their signatures to these additional Resolutions ; and a few who had signed the first series, took the opportunity of leaving the meeting, and, in the end, remained in the Establishment. Such is the account of the proceedings in this secret conclave, which we have received from witnesses on whose credibility we place the utmost reliance. It must be acknowledged, that it is not very easy to see, how those who had agreed to the first series of Resolutions, could reasonably object to the second ; although it is somewhat difficult to account for their having been led into the belief that, after such an act as agreeing to the first, they had neither taken, nor pledged themselves to take, the decidedly practical step implied in the second.

The second series of resolutions repudiated any right on the part

of the Church to oppose the will of the State, except by way of remonstrance, protest, and serious warning. Had the

11.
Second Series. same rule been laid down and acted upon towards the civil tribunals, giving forth, as they did, authoritatively and constitutionally, the mind of the State, the unseemly scenes which had so much disturbed the country would have been avoided. And it must ever be found a difficult task for those, who defend the majority of the Church, in these days of turbulence and disrespect to the decrees of the Court of Session, to justify the course in which the majority so long and openly persisted, after the admission now made by themselves of the duty which they owed to the State. The same series of resolutions claimed the right of the Church to point out to the civil power the invasions made upon her principles and constitution, and to construe the refusal of the State to remedy these grievances, as a sanction and recognition of the principles involved in them; fully acknowledged the power of the civil magistrate in matters civil, and his right to fix the terms on which he will give endowments to the Church; claiming at the same time the title of the Church, on the other hand, to refuse these endowments, when the terms cannot be conscientiously conceded; holding it to be the duty of faithful ministers to forego the endowments now held by them, in the event of the State refusing to relieve them from the interference of the civil courts in things spiritual, or sanctioning and enforcing conditions, to which they never can submit or yield obedience; and, in conclusion, resolving to transmit a memorial to her Majesty's government, and to both houses of parliament, setting forth that "it is the determination of the brethren now assembled—if no measure such as they have declared to be indispensable be granted—to tender the resignation of those civil advantages, which they can no longer hold in consistency with the free and full exercise of their spiritual functions, and to cast themselves on such provision as God in his providence may afford—maintaining still uncompromised the principle of a right scriptural connexion between the Church and State, and solemnly entering their protest against the judgments of which they complain, as, in their decided opinion, altogether contrary to what has ever hitherto been understood to be the law and constitution of the country."

The first question, which the position taken up by the Convocationists forces upon the notice of the impartial observer, is one of primary importance, in such a controversy as that which had now arisen—what is the Church as contradistinguished from the State? Did those who constituted this convention, and assumed the character, and spoke in the name of the Church, monopolise this status? or is the name, and qualities, and privileges, whatever these may be, to be extended to any and to every body of Christian men, uniting together in a common creed and a common worship? If those, who had at this time congregated in Roxburgh Place Chapel claimed that they were the Church, either exclusively or *par excellence*, they necessarily shut out all the ministers and elders of the Establishment, to which they themselves belonged, who did not go into their views of Non-intrusion and Spiritual Independence; but it did not solve the question—Which of these two bodies were the Church, as understood in this argument? Until, however, this question was solved by a satisfactory demonstration, the whole argument of the Convocationists proceeded upon a palpable *petitio principii*, when it assumed that the principles and constitution of the Church had been violated by the late decisions in the civil courts. If, in order to avoid this horn of the dilemma, the Convocationists allowed that, by the Church was here meant the Church of Scotland as established by law, then it must follow, that the courts of law are the sole and final judges, as to what this constitution and these privileges, so limited, amount; and their decisions cannot be illegal. In all that “the Church,” as the Convocationists were pleased to style themselves, was now doing, she was presenting herself to the legislature in anything but a becoming or constitutional attitude. After the courts of law, to which she had herself appealed, had spoken out, it belonged to the Church to obey their decrees; and while she might seek a change in the laws, sustaining the union of Church and State, she ought to have approached parliament in a practical acknowledgment of the binding obligations of those which it had already enacted. If the warrant for her present attitude was to be found in any inherent and scriptural right to frame her ecclesiastical regulations according to her own convictions, as these might

at any time arise—and to demand from the State such sanctions to these acts as should shield them from all civil surveillance, and at the same time secure her endowments—what security was given by her, that she would obey any law that might be obtained, longer, at least, than her belief that it was accordant with Scripture rule should be entertained?

The great error into which the Convocation fell, and which, ^{13.} indeed, had pervaded the whole reasonings and proceedings of the Non-intrusion and Spiritual Independence advocates, consisted in holding that, within the Establishment, the State has no interest and no right to interfere in the formation of the pastoral relationship between the minister and the people—this being what they sometimes called an ecclesiastical, sometimes a spiritual matter, within the province of the Church alone;—the title of the State to endow upon its own terms, and to withdraw these endowments, where it may see fit, being all that was acknowledged as belonging to it. Such a distinction, as was here attempted to be established, went obviously to erect a double Church—one consisting of pastors with, and another of pastors without, a flock to be superintended. But as the latter of these suppositions may at once be put down, as amounting to a contradiction in terms, the distinction may be very safely dismissed. It is obvious, that in the reasoning which recognises any distinction between the benefice and the cure of souls, as equally within the guardianship of the State, the principle of a national Establishment of religion is altogether violated. Under this principle, rightly understood, the State lays down at once to whom the fruits of the benefice are to be given, and to whom the cure of the souls of its subjects is to be confided; and by the statutes which in Scotland uphold this principle, the Church courts are “bound and astricted” to give the pastoral superintendence of the people, as much as the fruits of the benefice, to the qualified presentee of the legal patron—the said courts being satisfied, on trials taken, of the qualifications of the presentee for the work of the ministry generally, and of his suitableness for the particular parish to which he may have been nominated. The very few instances, quoted in opposition to this view of the subject—and in which the Court of Session were held

13.
Great error of Con-
vocationists.

as having found that the presentee, whom the Church courts had refused to ordain, was entitled to the living, but had no right to the spiritualities, and that the person to whom the pastoral charge had been given by the Church had no right to the temporalities—were clearly not decisive of the point, as the question was not raised by the party obtaining the benefice, on his right to be also put in possession of the cure. But the decision in the Lethendy case, given after these troubles of the Church had commenced, had left no doubt upon this most important point. In this case, the Presbytery of Dunkeld had been interdicted from giving the pastoral superintendence of a parish, within their bounds, to the presentee whose legal title to it was called in question. The Court of Session did not, indeed, directly find, that the presbytery were “bound and astricted” to form the pastoral relation between the people of Lethendy and the presentee, complaining that, in not doing so, his rights had been violated; but they prohibited that reverend body from constituting this relationship with one whose rights to the fruits of the benefice the Church did not maintain—or rather, had by this time distinctly surrendered; and, when the Presbytery of Dunkeld, under advice from the Commission of the General Assembly, persisted in violating this interdict, the Court of Session so far vindicated its authority in the punishment of the offending parties. It is plain, moreover, that, had the Church found herself as strongly fortified, as she pretended to be, in the title to form the pastoral relation within a parish, irrespective of the right of the civil courts to interfere, she would undoubtedly have appealed to the House of Lords, from the decision in the Lethendy case;—a decision obviously striking at the root of all the arguments by which she was attempting to justify the position which she had taken up, and which so many of her ministers were now pledging themselves not to abandon, as it left to her no powers or privileges, by which civil interests were affected, which she could exercise without being subject to the control of the civil courts. But the right of these courts to interfere, as much in the constitution of the pastoral relation, as in the disposal of the temporalities, was further founded on the principle, that the State maintains and endows a Church for the benefit of all its subjects;

and, while it regards every one as belonging to this Church, and invested with a title to the benefits which it confers, it does not contemplate any *right*, on the part of the lieges, to receive religious instruction beyond its pale ; much less can it tolerate the absurdity of the instrument, which it employs to work out its own purposes, actually defeating these purposes.

The Convocationists could not conceal from themselves that the
 14.
 Memorial to
 Government. attitude which they had now assumed bore the aspect, and might be liable to the construction, of an attempt to intimidate and concuss her Majesty's government ; and, in the memorial which they transmitted to headquarters, they took the greatest pains to disclaim any such motives ; while they declared with great firmness, that the principles which they held, and with which the decisions of the civil courts were at utter variance, were matters of conscience ; and that, consequently, if they remained in the Establishment, they must direct the affairs, and carry out the discipline of the Church, in direct violation of the judgments of these courts ; and that the only other alternative presenting itself was to relinquish their connexion with the civil immunities of the Establishment. In resolving to adopt the latter alternative, under the contingency contemplated, they were anxious, they said, to make this support of their principles consistent with peace and good order, and with the respect due to the constituted authorities of the State. They again went over the grounds compelling them to come to this decision, as these had been furnished in the proceedings before the civil courts in the Auchterarder and other cases, recapitulating the arguments, by which they upheld the Church to be, by law, as much supreme within her own spiritual sphere, as was the State in its civil province ; and maintaining that this, their view of the supremacy of the Church and State, each in its own proper department, was attended with no practical difficulties—the sanctions, by which each was enabled to vindicate its authority, standing distinctly separate and apart. The question, who was to decide whether any matter fell within the peculiar province of the one or the other, presented the real difficulty ; which the memorialists, however, did not certainly solve—if they solved it at all—in a manner consistent with civil and religious

liberty, or with the principles of the Protestant Reformation, in so far as their solution distinctly denied, that the State and its tribunals were the ultimate umpires in this question. A legislative sanction to this denial—an acknowledgment that, in this question, the Church was the umpire—was, however, what the memorialists substantially demanded from government; and, without which being conceded, they declared they could not remain within the Establishment. And this amount of concession they craved, as warranted by the Confession of Faith, the Second Book of Discipline, and the whole statutes and constitution of the Church of Scotland, as by law established. Every doubt, indeed, as to the nature and extent of the measure which they sought, was removed by the negatively-put illustration, which, for the instruction of her Majesty's government, they borrowed, on this occasion, from the Schoolmasters' Act. By this act the judgment of presbyteries, in matters touching its provisions, are final, without review or reversal by any court. But as this exclusion flows from the will of the State, so must the supreme civil court retain a radical right to interfere, so far as to judge whether a presbytery, proceeding under the act, is keeping within its provisions. But not so, it was argued, with a presbytery acting in the settlement of a minister. The power of the Church courts, in this case, is not conferred by the State; and, consequently, whether it is or is not exceeded or violated, cannot be a question for the civil tribunals. The statute 1592 has "bound and ascribed" the presbytery to receive and admit the qualified presentee of the patron; in other words, to receive or take him upon trials, that, acting judicially, they may pronounce a sentence of fit or unfit for the cure, and admit, or refuse to admit, to the same. But the taking on trials is not a civil matter, intrusted by statute to a subordinate court; nor is it a civil obligation, which a superior judicatory may enforce: It is a spiritual matter over which the Church has an inherent and independent jurisdiction;—her connexion with the State and its tribunals only subjecting her to this condition, that when those tribunals find her in contravention of the law, as interpreted by them, it is competent for the State to withdraw the fruits of the benefice. The measure, therefore, demanded by the memorialists, under this view of the rights

of the Church, was one which should provide that, upon the Church exercising her title to take upon trials or not, as she might think fit, the civil courts should be prevented from coming in, to square her procedure by any law of the State; and, consequently, in any circumstances, from separating the fruits of the benefice from the cure of souls. But as the proceedings in the civil courts, under the second or damages-aspect of the Auchterarder case, had shown, according to the memorialists, that not only are the fruits of the benefice to be disjoined from the cure of souls, at the discretion of these courts, but that the individual members of presbyteries, while in the conscientious discharge of their duties, were to be dealt with as wrong-doers, the measure that had now become necessary must go further than the Church once contemplated, and presbyteries must be protected from all legal penalties in following out the Church's own interpretation of the law of settlement.

The fathers and brethren of the Convocation, who forwarded
 15. this Memorial to her Majesty's government, took
 Assumptions of upon them, in the course of the argument which
 the Convocation. they set forth, to speak in the name of the Church—certainly without the shadow of authority to assume this status. An assembly, gathered together as had been the present, and from which not only all the clergy differing in opinion from the Non-intrusionists were excluded, but to which none of the eldership of the Church on either side were admitted, could in no sense be regarded as representing the Church, or entitled to speak her sentiments. Yet did the Convocation go so far as to inform her Majesty's government, that should the claim they had put forward be rejected, "the Church" would have no course left, but to relieve herself from the condition in which she would then be placed, by resigning the benefits of the Establishment. Now it so happened, in fact, that the legislature did directly sanction the subjecting of the Church courts to the civil, so far as jurisdiction over the former had been claimed and exercised by the latter; and the General Assembly, so far from doing what the memorialists asserted the Church would do, "relieve themselves from the benefits of the Establishment," unanimously acquiesced in the conditions, said to be altogether inadmissible, and retained their old relationship

towards the State ;—not a few of those who had concurred in the Claim, Declaration, and Protest, having seen good ground to change their opinion, and relinquish their former creed. It would, indeed, have been unfortunate for the character of the Church of Scotland, so far as the verity of the declaration made by the Convocationists to her Majesty's government was to be measured by her subsequent procedure, when met in General Assembly, if she had been represented on this occasion by the divines who had congregated in Roxburgh Place Chapel.

After the Convocation rose, an "Address" was published under
 16. its authority "To the Christian People of Scotland,"
 Address to the people of Scotland. explanatory of the position in which the assembled fathers and brethren had found themselves ;—the principles applicable practically to this position ;—the proceedings already adopted in support of these principles ;—and the duty of the people of Scotland, at the solemn and eventful crisis, which had arisen in their national Church. This address betrayed considerable anxiety to make good a comparison between the position of the Church of Scotland in 1843, and that in which it was found in the days of persecution and trial under the Covenant ; but the attempt must have been felt at the time to have so far proved abortive, as scarcely a single point of likeness was traced between these periods in the Church's history ;—beyond, indeed, that of the Non-intrusionists borrowing the language of the Covenanters, in maintaining the doctrines to which they now adhered. In this address the Convocationists, at the very moment when they meditated a secession from the national Church, were careful also to maintain the principle of an Establishment, as consonant with and demanded by scriptural requirements ; and the people were told, that it was not so much the duty of the civil magistrate to uphold the Church, as the inherent liberty of the Church herself, and her exclusive jurisdiction in things spiritual—her right to regulate her procedure at all times according to her convictions of duty—which were now the great questions in dispute. The principle, on which this liberty rests was, according to the Convocation, that a Christian Church, in carrying out her spiritual government, must be guided solely by the will of Christ ; and although the fathers and brethren did not

directly draw the corollary, it followed of necessity, that the Church herself, meaning "the office-bearers" in his house, was to be the sole interpreter of this rule. In illustrating this principle, under several assumed hypotheses, the Convocationists made themselves the more intelligible to the people, by instructing them that the cases supposed were just the cases that had actually occurred; and they took, on this occasion, at once the highest and the most distinctly marked ground which they had yet occupied. "If, for instance," said they, "the Church is warranted, by the word of God, in laying it down as a fundamental principle, that no person is to be intruded on a congregation contrary to their will, then the Church cannot form the pastoral relation, in such a case, without violating the will and disowning the authority of Christ the Lord. If, again, this Church is warranted and required, by the word of God, to depose from the office of the holy ministry such as are proved to be false teachers, or immoral men, then she cannot refrain from pronouncing sentence against them, without breaking the law of his kingdom, and must obey his will, whatever prohibition may be issued against her by any civil power. If, once more, the Church is warranted and required, by the word of God, to preach the gospel to every creature, and if she be bound especially to provide a gospel ministry for the people, who have been placed under her immediate charge, then she cannot desist from the discharge of this duty, without virtually disowning her own divine commission; and her only answer to every interdict or prohibition against the free proclamation of the gospel, in any district of the land, should be, 'We must obey God rather than man.'" To pursue this course, in the circumstances supposed, was, according to the Convocationists, practically to apply and carry out the doctrine of the Headship of Christ in his own house—that great doctrine for which, they said, our godly fathers, in former times, were content to struggle, to suffer, and to die. The people were reminded, that, among the Churches of the Reformation, that of Scotland stood distinguished, in that she had contended not more for the doctrine of "his Cross," than for the honour of "his Crown;" and while all Christians can easily understand what is meant by contending for the doctrine of Christ's cross, we are instructed, in this address,

in what we are to understand by vindicating the honour of "his crown," when it is laid down, that the independence of the Church courts upon the civil judicatories of a country, and the "rights of the Christian people,"—*i. e.*, their privilege in spiritual matters to be ruled alone by ecclesiastical tribunals—are equivalent and convertible terms. When, however, the authors of this address went on to maintain, that these doctrines are "embodied in the public religious standards of Scotland, and solemnly ratified by the law of this ancient kingdom," they were told, that they just placed themselves in direct opposition to the supreme civil tribunals of the country, assuming that as proved, which was not only incapable of proof, but the contrary of which had been established by the very umpire to whom the Church herself had appealed. In holding up, as the Non-intrusionists did in this address, that the act of Queen Anne, 1711, was altogether inconsistent with the "fundamental principle," as explained by them, they were held as quite consistent; but when it was recollected, that the whole of their proceedings, when negotiating with Lords Melbourne and Aberdeen, and others, for the settlement of the Church question, had been based upon the assumption, and, in fact, upon the distinct admission, on their part, that lay-patronage was still to remain the law of the land, it was not easy, said their opponents, to regard the commentary given in this address, as quite in accordance with the text formerly admitted, to have nothing in it opposed to Scripture or reason. The Convocationists did, indeed, assure the people of Scotland, in this address, that had the only question between the civil courts and the Church been that which was raised in the Auchterarder case—a mere question of Non-intrusion—the difficulties might have been surmounted, and peace restored;—a declaration, which most clearly condemned the course which the Church had pursued, in raising, as she herself had done, the far more difficult question of spiritual independence; and proved how wise had been the policy recommended by Dr Cook, at the beginning of these troubles, to acknowledge and submit to the law, as interpreted by its highest authority, and to fall back on the practice, in regard to settlements, which prevailed before 1834. But the people were told, that the civil courts had attempted to exercise a direct control over the Church, in her most sacred func-

tions ; and had assumed a right to suspend and reduce, as well as to prohibit and interdict, the sentences of her spiritual courts, in regard to the admission and deposition of ministers, the preaching of the word, and the dispensation of ordinances. Such powers as these, the ecclesiastics of the Convocation claimed to themselves, sitting in the Church courts ; and they consequently refused to the Christian people—the Church, *par excellence*—that *refugium* in the civil courts, which the law and constitution of the Church of Scotland had provided. According to the Convocationists, the civil courts had suspended the sentences of the Church, and prohibited the intimation of her censures ; they had interdicted her ministers from preaching the gospel in an extensive district of the country ; they had prohibited her communicants from intimating their dissent against the admission of a presentee as their pastor ; they had forbidden some of her commissioners from taking their seats in the General Assembly ; they had attempted to control the exercise of discipline, even in cases of the most flagrant moral delinquency, and to interfere with the authority of the Church, not only over her office-bearers, but over all her members. These accumulated charges against the civil courts only suggested to every one, who had watched the progress of events up to this date, that the position of these courts towards the Established Church would have been more fairly set before “ the people of Scotland,” had they been told, that the statutes of the realm, erecting the Church of Scotland, had imposed on these courts the duties here represented as invasions of her rights ; that of these statutes they, the civil tribunals, were the constituted interpreters, and, as bound by their oaths of office, they had, no doubt, honestly discharged their duty. In point of fact, the civil courts had not reviewed, suspended, or reversed any one spiritual censure upon its merits, as was manifestly, and not very honestly, insinuated in this address ; for from the exercise of this jurisdiction the statutes had expressly excluded them. But they had found, as they were entitled to do if they saw ground, that the Church courts, in pronouncing these censures, had not come within, or had gone beyond, the statutes under which her spiritual jurisdiction, as the Church of the State, is to be exercised. It was, therefore, of this extent of jurisdiction, that the Convocationists really

complained ; and their determination to separate from the Establishment, if the supreme power of the State should declare that the law was to remain as interpreted by the civil courts, was just equivalent to the demand, that the Church should be left to execute, or not, as she saw fit, the duties laid upon her by the statutes ; and, when she did carry them into execution, to go about the work in whatever manner she might see proper. It was utterly to annihilate anything like a mutual compact between Church and State, as it made future and contingent convictions of duty—not the convictions severally agreed upon at the union—to be the rule of the Church's procedure ; and, as it was not easy to see how the Church could refuse the same latitude to the State, the idea of a contract, guaranteed by mutually fixed engagements, was still farther exploded. The present address to the people of Scotland brought out these principles and doctrines in full relief, and intimated to the country, in a very unblushing manner, that victory, on the part of the Church, in the contest in which she was engaged with the State, would terminate in subjecting popular rights, no less than those of patrons and presentees, not to the fixed and definite provisions of law, but to the fluctuating and arbitrary caprice of Church courts.

It seems altogether unaccountable, how so many of “ the people
 17. of Scotland ” as did afterwards secede, should have
 People misled. been led away by this address ; and we are driven to ascribe the phenomenon, more to the pride of the human heart, which forbade them to retreat after they had advanced a certain length with their ministers, than to any force of argument, by which their understandings could have been convinced. It may, indeed, be fairly presumed, that, had the principles so openly put forth in this address been promulgated, with equal explicitness, at the outset of the controversy, many, who were afterwards found in the ranks of secession, would have hesitated to enlist under the banner of spiritual independence. It was afterwards confessed, by not a few of the seceding ministers themselves, that, up to this period, they had never seriously dreamt of separation from the Establishment ; and that while, at the earnest solicitation of the leaders in the movement, they had agreed to take this step, should the contingency placed before them arise, they felt assured—as they were,

indeed, repeatedly told by these leaders themselves—that the necessity of redeeming the pledge would not occur,—the very attitude which they were assuming, in such numbers, being enough to deter any government from withholding their claims. It was not, it was said, to be believed, that claims so urged by a body of men, who stood so deservedly high in the esteem of their country, for their piety, talents, and usefulness, could be withstood; more especially, as the alternative in prospect was not only that of weakening one of the best safeguards of the nation's morality, peace, and loyalty, in the northern part of the empire, but endangering the safety of the Church of England herself. It may be very readily conceded, in reply to all this reasoning, that such claims, so grounded, could not have been withstood, as they eventually were, on any other ground than a conviction of their obvious incompatibility, if granted, with the preservation of those civil institutions which had raised this Protestant country to the power and freedom which it enjoys.

After the rising of the General Assembly 1842, two addresses,
18.
Addresses to the
Crown. which had been voted by that body, had been transmitted to Sir James Graham, one of her Majesty's principal Secretaries of State. The first of these brought under the Queen's notice the Claim, Declaration, and Protest, anent the encroachments of the Court of Session on the spiritual jurisdiction of the Church, which had been adopted by the Assembly. The second was an address, praying that her Majesty would be pleased to direct measures to be taken towards effecting the abolition of lay-patronage in Scotland. Under the reservation, communicated by the Marquis of Bute, through whom the addresses were forwarded, that, in laying them at the foot of the throne, he gave no sanction to the views they contained, Sir James Graham presented them to her Majesty, who did not see proper to issue any immediate command in regard to them. It appears, that the right honourable Secretary of State had his own misgivings, at first, as to the constitutional propriety of at all presenting these addresses to the throne; but finding that their language was respectful, he intimated to the Marquis of Bute, that he was unwilling to intercept them on their way to the sovereign. The Commission of

November 1842, accordingly, returned to this subject ; and another memorial was forwarded, reminding her Majesty's government of the addresses yet unreplied to, and intimating, that this silence on the part of the Crown was regarded as incompatible with the respect due to the General Assembly. The transmission of this memorial was the sole work of the Non-intrusion party, none of the Moderates having attended, or taken any part in the proceedings of the Commission where it was prepared. Its adoption was proposed in a very eloquent and elaborate speech from Dr Candlish. He represented the crisis, which had at length occurred, as the most momentous that could be imagined ; and the opportunity then offered to the State as the last which it might enjoy of " saving the Church of Scotland—the most precious institution which God had established in any land." The rejection of the claims set up by the majority of that Church, he painted as necessarily bringing down the Establishment ; nor did he once advert to the contingency, that if the minority occupied the legal and constitutional ground on which the Church rested, that minority would necessarily be hailed and regarded as the Church of Scotland ; and while that Church might lose many able, pious, and upright ministers, in the majority deserting her communion, her ruin or downfall would be as distant as ever—her integrity as entire, and her usefulness, upon the vacancies being supplied under her authority, as extensive as before. The same consideration took away the force of Dr Candlish's reasoning, when he urged, that it ought to be a very serious matter for the State itself, to permit such a national institute as the Church of Scotland to be destroyed ; and that the question had now become,—not so much what the Church ought to do, under the decisions given in the civil courts, as what course the State ought to follow for its own sake, and for that of all the interests committed to its care. He admitted, that had things remained *in statu quo*, since the last Assembly had voted its Claim of Rights, it would have been becoming in the Commission to wait, until the next Assembly should determine what was to be done, in the absence of any notice of this Claim by her Majesty's government. But, since that Claim had been voted, the most direct and palpable invasions

of the spiritual province of the Church had been perpetrated by the civil courts, in finding, as in the Auchterarder case, that damages might be awarded against a presbytery, obeying their ecclesiastical superiors; and that, as in the Strathbogie, the spiritual censures of the Church might be suspended and reduced by the Court of Session. In respect to the Auchterarder case, he admitted the right of the civil courts to give damages in civil matters; but of this he complained, as the monstrous injustice and illegality perpetrated by these courts—that they first enter the spiritual province, and find that a civil wrong has been done by the spiritual sentences of the Church; and then retire back into the civil province, and, by means of the civil sword, coerce and restrain the spiritual authorities in a jurisdiction which both Scripture and the constitution had exclusively and independently vested in them. According to his view, they entered the province of the Church, and determined for her what her duty was, which they had no right to do;—a doctrine, which it may be difficult to reconcile with the precise enactment of the statute, that the presbytery is “bound and astricted to receive and admit the qualified presentee of the patron.” Without at once denying that it is the province of the civil courts to interpret civil statutes, and asserting that this right was, in the matter under notice, vested in the ecclesiastical, there was no escaping the dilemma, that civil *wrong* may be done by a Church court—established by law—without any civil *remedy* being provided. Dr Candlish, indeed, rested strongly on the distinction to be drawn between the duty of the civil magistrate *circa sacra*, and his duty *in sacris*. To establish a Church; to endow it as he sees fit; to favour and protect it; to say what the Church, so established, shall teach, and to lay down its doctrines, taking the word of God alone into his own hand, and acting on his own responsibility—in all this the civil magistrate was within the *circa sacra* province; and was altogether independent of the spiritual. But when he proceeded to assume rule over, and to act as the governor of the Church—compelling her to follow the course pointed out by him, he was within the precincts of the *in sacris*; and beyond his own legitimate and scriptural duties, and under the exercise of such powers, no scriptural Church could

exist ; and the destruction of the scriptural Church must, according to Dr Candlish, bring along with it the annihilation of Christianity itself. Fearfully important, therefore, he argued, was the responsibility which the decisions of the civil courts *in sacris* had at length laid upon the legislature, to which the Commission was now, as a last resource, most earnestly to appeal ; and, in going to parliament, Dr Candlish would no longer have the Church regard, as she had done, what she was herself to suffer in her temporalities by such decisions as had been given ; but to warn the legislature of the vast interest which the State itself had in confining the civil tribunals within the *circa sacra* province, and restraining them from violating the *in sacris* domain. If parliament would not listen to and redress their grievances, the consequences would be at their own door. If the State was willing to take the law, as it had come from the civil tribunals, and to lose the services of the only ministers for whom the people of Scotland cared, and who alone, he said, were able to uphold among them a respect for the principles of right government, the mischiefs impending would fall not upon the Church, but upon the State. To refuse the demands now made by the Church, would be, he added, an overt act of the State, refusing the right of Christ to reign in his own house—a declaration that, so far as the State was concerned, there should be no scriptural alliance between Church and State at all.

The very remarkable speech of Dr Candlish on this occasion, when he at last clearly saw the destiny that awaited
 19. Remarks. Non-intrusion and Spiritual Independence, is full of interest, and redolent with claims to attention, in the circumstances in which he and his followers are now (1849) placed, arising out of the Educational Policy of the State. The duties which he laid down in this speech, as binding on the civil magistrate *circa sacra*, were every way sound ; and such as must have found favour with the most scrupulous Moderate in the Church. How far they can be regarded in the same favourable light by the *Voluntary* allies, with whom he and his friends of the Free Church are now associated, it may be more difficult to imagine. But it must be so far consolatory to the supporters of the Establishment to know, that, on the great principles that indicate the

duty of the civil magistrate in the religious instruction of his subjects, the old and once zealous and faithful children of the Church of Scotland would appear not to be removed to such a distance as altogether to preclude the hope of their return within her pale.

To the second memorial presented by the Commission, Sir
 20. James Graham, her Majesty's principal Secretary
 Sir James Graham. of State, replied at great length, in a letter to the Moderator, under date 4th January 1843. He disclaimed, of course, anything like disrespect towards the General Assembly; assuring the Moderator, that if her Majesty's government could have entertained the propositions laid before them, not a day would have been permitted to have passed, without conveying information to the Church. But, as government thought the demands put forth by the Assembly unreasonable, and were not without hopes that they would have been reconsidered, they had deemed silence in regard to them the most respectful course towards the Church. Now, however, that these demands were repeated by the Commission, and more fully and clearly set forth; and as an answer to them was claimed, on the ground of the obvious right of all the subjects to a reply from the Crown, when applying for redress against grievances, the further refusal might be considered as disrespectful, and inconsistent with the relations which her Majesty was most anxious to maintain with the Church of Scotland, whose discipline, rights, and privileges, as established by law, her Majesty was bound to preserve inviolate. These rights, so established, it was asserted by the Commission, had been violated; and her Majesty's ministers were led, in the first instance, to ascertain when this violation occurred, and by whom it had been perpetrated. They found the date of the violation, fixed by the Church herself, at so recent a period as 1834; and, looking to what then took place, they saw the Church herself encroaching upon the civil rights of patrons, which the civil courts were bound to protect—not the civil courts encroaching upon those of the ecclesiastical. To justify this encroachment, they found the Church, in the Claim, Declaration, and Protest, laying down the doctrine that, wherever spiritual matters are involved in any question before the civil courts, these courts have no right to adjudicate; and that, whether

spiritual matters are or are not so involved, was a question for the Church alone to determine. The civil court had, however, it was alleged, interfered in a spiritual matter—that of taking a presentee on trials; and hence the encroachment complained of.

In reply to these doctrines, her Majesty's government plainly told the Commission, that they could not be conceded without the surrender of civil liberty, and without the sacrifice of personal rights. The right honourable Secretary admitted most readily the difficulty of maintaining the harmonious operation of independent civil and spiritual jurisdictions; but when such questions arose, as how far a matter was civil or spiritual, they were, he said, questions of law, and, being questions of law, must be decided by the courts of law. From these principles her Majesty's government could not depart, nor admit that the General Assembly is entitled, by the law or constitution, to decide what are the boundaries of civil and ecclesiastical jurisdiction; in other words, what are the limits of its own powers. Such a right the statutes had not conferred on the Church; and, consequently, no argument could be drawn from them that the Assembly, in its legislative capacity, can establish resolutions for her own guidance as she pleases, and can uncontrolled follow them out by laws of her own framing. Such, no doubt, he allowed, was the principle on which the Veto law of 1834 was passed; but, in the opinion of her Majesty's government, the assumption of such a right led directly to despotic power; had undoubtedly proved the source of the Church's present difficulties, and was directly opposed to what is laid down in the Confession of Faith and the Second Book of Discipline, that Church courts shall not intermeddle with anything "pertaining to civil jurisdiction;" that is, plainly, with anything which civil courts pronounce to be of this character. The Veto Act had been so declared by these courts, and that upon appeal to them by the Church herself; and yet this act was still retained on the ecclesiastical statute-book! The Church, in violation of the maxim laid down in her own standards, was "meddling with things pertaining to the civil jurisdiction." The decisions in the Auchterarder case her Majesty's government regarded as ruling all minor cases that had occurred. These decisions had found the

12.
Doctrines replied
to.

Veto law to have been *ultra vires*; and that presbyteries acting under it, to the detriment of private parties, were liable in damages; and it followed, of consequence, that everything done by the Church, on the ground of the legality of the Veto, was null and void. So far, indeed, as the question discussed in the memorial involved the rights of *quoad sacra* ministers to sit in presbyteries, under the sole authority of the Church, Sir James Graham gave no opinion, as the matter was at that moment *sub judice* in the civil courts. But he readily admitted the evils resulting from a conflict between two conflicting jurisdictions claiming to be supreme; and in the legislature alone he saw the remedy for these evils. He observed, however, that, in the Declaration and Claim of Rights by the Church, the acts of the legislature itself were no less censured, than the decisions of the courts of law, as invasions of the Church's rights; and certainly it was not, he said, to be expected that, when a Church established by law quarrelled with the courts of law, she would long retain her respect for parliament itself. These courts were but the mouth of the legislature; and if the legislature should again speak in a new statute, the same courts must again give forth its meaning with authoritative force. If this giving forth, on their part, is withstood as an invasion of the rights of the Church, it must follow that the blame rests with the legislative, not the executorial power; and who, he asked, is to judge between the Church and parliament? Are acts of parliament to be subjected to the ecclesiastical judicatories, that, so far as these judicatories may decide that they touch on spiritual matters, they may have no effect? Such, as appeared to her Majesty's government, was the amount of rights now claimed by the Church of Scotland; and to anything like concession to these claims he would not advise her Majesty to agree. So far as the specific object of abolishing patronage was concerned, government was persuaded that the system was conducive to the welfare and stability of the Church herself; and the memorial from the Commission laboured, he said, under this imperfection, that, while it held the hands in which patronage was now invested to be unworthy, it did not point out in what hands it ought to be placed. The proposal to transfer it to the people was, he allowed, specious and

attractive ; but in time it would fall into the hands of the Church —“ a consummation which,” adds he, addressing the memorialists, “ you will probably think with me, would be no less injurious to religion than dangerous to the State.” He was ready to admit that lay-patronage had been abused, but checks, every way salutary and expedient, had been provided. The choice of the patron was limited to licentiates, and the creation of licentiates was solely within the power of the Church courts. Examination and admission, when presented to a living, were also altogether within the province of the Church ; and, with these checks, it was difficult to see how patronage could, in its exercise, become a real evil. But, as matters now stood in the Church, he reminded the Commission, that the Veto law was directly in the way of, at once, the rights of the patron, and the duties of the Church. Were this act repealed, the road would be clear and well defined : the patron would then have to present, the people to object, if they should see proper, and the presbytery to sit in judgment upon these objections. On these principles the right honourable Secretary informed the memorialists, that Lord Aberdeen had based his bill of 1840 ; and on these principles he had himself signified the willingness of government to legislate. But the Claim, Declaration, and Protest, now presented, had convinced her Majesty’s government, that nothing less than the total abolition of patronage would satisfy the Church ; and they felt bound to declare, in all firmness, that they could not advise the Queen to consent to such a demand.

Before the memorial, thus replied to, had been laid before her Majesty’s government, the question of Non-intrusion
 22. Complaints made. had taken its place as secondary to that of Spiritual Independence, although they still continued to be mixed up together in the demands of the Church ; and complaint was now made, that government had given to the repeal of the Act of Queen Anne 1711, a greater prominence in their answer than the Church had assigned to it ;—a position not a little singular, when we look back to the debates on patronage within the Assembly, and the vast and paramount importance then attached to its abolition. The Non-intrusion Committee drew, at length, this wide distinction between the two questions, that while the Church could submit to the

Act of Queen Anne remaining on the statute-book—from which, however, she still prayed that it might be erased—she could never agree that, upon parliament granting her a law confirming, or conferring on her spiritual jurisdiction, the Court of Session should be the judge whether, in exercising her rights and discharging her duties under that law, she was keeping within, or going beyond, its enactments. It was plain that, with ecclesiastics claiming such immunities, the advisers of a Protestant sovereign had but one way of dealing.

Defeated in their attempt to obtain the countenance of her Majesty's government to their Claim of Right, the Non-intrusionists had but one course before them, to which they could now betake themselves -- an application directly to the legislature to take into consideration the very perilous state of the Church of Scotland. They accordingly prepared for this, the last field on which they could entertain a hope of being successful; and in the month of April 1843, the Right Honourable Fox Maule brought the subject before the House of Commons, on presenting a petition from the Commission of the General Assembly. This petition set forth precisely the same grievances, of which the Commission had complained to her Majesty's government, as originating, first, from the late decisions in the civil courts, and secondly, from the Act of Queen Anne anent lay-patronage, and prayed for relief from the same. The right honourable member for Perth, in a speech distinguished for great ability and candour, went over, at great length, the same grounds which the petitioners had occupied in their memorial to Sir Robert Peel; and was supported by Mr Rutherford, Sir George Grey, and others, in the motion with which he concluded, that the House should resolve into a committee, to take this petition into consideration. This motion, limited as it was, and calculated on that account to obtain the greater support, was opposed by Sir James Graham, Sir Robert Peel, and Lord John Russell, in a debate which occupied two days; and was remarkable, among all the discussions that had taken place on the Church question, for the dispassionate spirit brought to it by all who spoke, and by the earnest attention with which the house listened to the arguments on both

23.
Application to parliament.

sides. The motion to go into a committee was negatived on a division of 211 to 76.

It can scarcely excite surprise, that such demands as we have
21. seen to have been embodied in the Claim of Right,
 Remarks. as explained by the "Address to the people of
 Scotland," should have been rejected by a British House of Commons in the middle of the nineteenth century; it is only wonderful, that they should have been so far countenanced, as to have found a minority of upwards of seventy members, willing so far to entertain them, as to make them matter of deliberation before a committee. For although the motion made by Mr Maule did not commit any member of the House to an approval of the measures to be discussed, yet the arguments, that went to establish the expediency of granting the committee, necessarily went to uphold the claims set up by the Church; and the right honourable mover and seconder displayed very great zeal and talent in bringing forward these arguments as fully and fairly, as if the House had been debating the measure upon its merits. After the rejection of these arguments by the House of Commons, the Committee of the Church did not deem it expedient to make any application to the House of Lords; but from this day the preparations for a wide-spread secession from the Establishment were more and more vigorously prosecuted. By this time, the leaders in the ecclesiastical movement had ascertained, to a fraction, to what extent this secession would proceed among the clergy; and it is remarkable that the precise number of seceders, as it afterwards turned out, in the great towns and cities of Scotland, was made known to the premier. This knowledge had been reached through a well-organised agency at Edinburgh, which was understood to keep up a correspondence with every minister in the Church known to entertain Non-intrusion views; and from them promises to secede in the contingencies set forth were sought, and, in most cases, obtained. There were, indeed, occasional refusals to "take the pledge;" and when the doing so was urged, on the ground of the fulfilment of prophecy, that the time was come when "the witnesses for the truth were to be slain," the reply was, in one instance at least, at hand, that while it was doubtless true that the witnesses were to be slain, it

was nowhere said, that the witnesses were to slay themselves! On the other hand, her Majesty's government were urged by a deputation from the Moderate and Constitutional Committee, not only not to concede the demands made in the Claim of Rights—of which, indeed, there was little risk—but to refuse conferring on the Church courts the *liberum arbitrium* proposed by the amendment of Sir George Sinclair, as understood by Dr Gordon—a concession which at this time there appeared a strong inclination to grant. They were led, by the same parties, to believe that, although the threatened secession might be large, it would not be to the extent given out by the Non-intrusionists; and they were reminded repeatedly of the pledges which they had given to the Strathbogie ministers—and others who, like them, had suffered the censures of the Church, for having obeyed the law of the land—that, until these injuries were repaired, no bill would be introduced or supported by her Majesty's government. These pledges were fully redeemed; while, at the same time, Sir James Graham took occasion, in the course of the debate on Mr Maule's motion, to intimate the willingness of her Majesty's ministers to support any measure of Non-intrusion which might be suggested, consistent with the principles of law and good order.

The Non-intrusionists had, by this time, evoked a spirit among
 25. their lay supporters, which, had it been possible,
 1842-3. Pressure some of them evinced a not very equivocal desire to
 from without. mitigate or suppress. They had created a "pressure from without," which was driving them on to a consummation, not, as it appeared, so "devoutly to be wished" by some, as they had led the world to believe, while themselves indulging in the hope, that her Majesty's government and the legislature would interpose to avert the threatened schism; and alarming symptoms of drawing back began to manifest themselves in quarters where the cause of Non-intrusion and spiritual independence had but lately found the most active supporters. This hesitation manifested itself in the west of Scotland, where it might have been expected, from old associations, that the flame, in favour of "the liberties of the Kirk," would have burned with the greatest vigour. But when the clerical leaders in and about Glasgow displayed an inclination to narrow the claims for

the Christian people, which they had urged at one time with so much violence—and this, when the attitude assumed by government and the legislature clearly pointed to no other alternative than a surrender, or a secession—they found that their lay friends, whom they had been so zealous and successful in inoculating with the “Church Defence and Anti-patronage” mania, would mark their sense of such a retrograde step by themselves leaving the Establishment, careless whether they had or had not the company of their ministers;—an occurrence which actually did take place in more instances than one. These west country zealots among the laity came opportunely to the assistance of, and were, in their turn, strongly urged on by, the more stern and determined ministers in and about Edinburgh, with whom, at length, “no surrender,” but “a secession,” had become the watchword; and who were pressing their brethren in the west to take up the same position, which, it seemed, some of the most eminent among them were hesitating to occupy. Anti-patronage leagues, and Associations in “Church defence,” were organised with the more energy, that some of the leading organs of the Non-intrusionists began to regard them with evident coolness, if not apprehension; and the “uncertain sound” which the “trumpet” of the western churches at one time gave forth, was the signal for proposing to carry the war into quarters where its din had not yet penetrated. The electoral departments of the town-councils were now to be assailed, with the view of securing the return, as members to these bodies, of “suitable persons,” who adhered to the principles for which the Church was contending—“all considerations in regard to secular politics being made subordinate to the great object in view.” This, and similar movements, proclaimed “war to the knife” against everything like a compromise of the principles on which the Non-intrusionists had, by this time, taken their stand; and to “the Electoral Lay Association” of the western capital of Scotland has been awarded the merit, or demerit, as it may chance to be regarded, of keeping more than one of its ministers under banners which they would, at this critical moment, have fainly deserted; and which some of the far-seeing Non-intrusionists had found an opportunity of deserting. The consequences to the cause of Non-intrusion, from the desertion

of the very pillars to whom a most prominent share in all the negotiations that had taken place with government and influential statesmen had been assigned, was justly dreaded by their Edinburgh coadjutors ; and their special domain was invaded by lay and clerical agitators from the east, who at length succeeded in warding off the fearful jeopardy to which, at this time, Non-intrusion and spiritual independence were exposed. In this manner the real crisis of the " conflict " passed. But, however much overlooked by others who have writ its annals, it must be told, that those who, after the Secession, became the loudest and most eloquent in painting the high ground of moral principle, on which rested the *Exodus* of the 18th May 1843, would not, at this important juncture, have refused the bill of his Grace the Duke of Argyle ; and would even have received the measure of Lord Aberdeen which they rejected in 1840, as amended by Sir George Sinclair, rather than relinquish the Establishment, and its good things. But reminded by their sterner, and, in this, more honourable brethren, how deeply they had, by this time, pledged themselves not to rest content with such half-and-half measures, and reproached with lukewarmness in the cause, by the " Church Defence and Anti-Patronage Association " of their lay supporters, they were driven to cast in their lot with those who were willing to stand the hazard of the die.

While the steps which have been noticed were being taken in the
 26. House of Commons, Lord Campbell moved a series
 House of Lords. of resolutions in the House of Lords, on the subject of the existing dissensions in the Church of Scotland. He was anxious, he said, to elicit the opinion of the House, in the hope that it might dispel many delusions which had gathered around the question out of doors, and avert a crisis that could not be too deeply deplored. He thought, moreover, that the Lords were bound to follow the example of the other House of Parliament, and to place their sentiments on so important a matter before the country. During the former government, and when consulted officially on the expediency of legislating, with a view to settle the affairs of the Church of Scotland, he had advised, that no such attempt should be made, while no assurance could be given that any measure brought forward would

be satisfactory to the Church ; and he entirely agreed in the resolution of the present government, not to interfere with the dispute in the Church of Scotland, in the present posture of affairs. But he anticipated great benefit from an expression of their lordships' sentiments on matters as they now stood, as it must bear upon parties now distracting the Church ; and, in seeking this opinion through the Resolutions which he had to submit, he did not desire to bind the legislature to any specific course, and he was himself following one sanctioned by precedent. The first of the resolutions went to pledge the House, to preserve the inviolability of the Presbyterian Church of Scotland ; and to this he could anticipate no objection, as that Church was not only established by law, and guaranteed by solemn international treaties, but as it was the Church suited to the wishes and habits of the people of Scotland, and had been the instrument of conferring the most signal benefits on that country. Nor could it, he thought, be otherwise than felt by all, who looked attentively into the matter, that the welfare and security of the Church of England herself were deeply involved in those of the Church of Scotland ; and, he might venture to add, not only was the fate of the religious institutions of the country engaged in this controversy, but also that of the civil institutions, and the rights and privileges of the constitution. The Church of Scotland, alarmed by certain decisions that had occurred in the courts of law, had come forward, making certain demands upon the legislature, with the view of guarding her from the evils to which she held that these decisions had exposed her ; and he thought that these demands might, without danger, to a certain degree be conceded. In the communications which had taken place between the Church and government, it was admitted by the Right Honourable Secretary for the Home Department, that, under the law of Scotland as now existing, objections might be made to the nominee of a patron, that he was not acceptable or suitable to the parish. Now, it might or might not be advisable that such should be the law, but he was quite prepared to maintain that, at present, such was not the law of Scotland. The late decisions in the Auchterarder case must be held as having placed beyond a doubt, that the presbytery is bound to receive and admit a presentee if qualified,—and which

qualification must be personal; and the question, he apprehended, could not be raised,—Is he suitable for this particular parish? but, Is he qualified in learning, morals, and orthodoxy? No doubt, he allowed that the practice of the Call, as known to the Church of Scotland, pointed to a greater latitude of objection; and he had nothing to say against the jurisdiction of the Church being extended. But the proceedings under the Call had no authority in the law or statutes of the country. He was bound, however, to say, that he was himself a friend to the parish being invested with some control in the settlement of the minister; to some provision being made, whereby it should be rendered necessary that the presentee should be suitable to the congregation: and when the Church of Scotland laid aside her present attitude of direct resistance to the law, as declared by the House of Lords, he would be ready, for one, to listen to her demands for such privileges to her people. He was at one time of opinion, that the Veto Act of the Church would accomplish this object in a very desirable manner: he had now changed his opinion, as he had come to regard it as unreasonable, in not securing the actual majority of a parish from having an unacceptable minister placed over them, while a very suitable person might be capriciously rejected. He would, however, allow the parishioners to look to the suitability for the particular congregation, and to offer any reasonable objection on that score, of which the presbytery should be the judges; and accordingly, his Third Resolution went to express the readiness of the House, in the event of any measure of this kind being submitted, to give it every support and encouragement. Such a modification of the law of Scotland would give to presbyteries greater powers than they now possessed; and he trusted to the influence of public opinion restraining them from abusing these powers; but, beyond this concession, he did not think the legislature could go. He could not accede to the demand made by the Church, that patronage should be abolished. He disapproved of the Act 1690, although it did not abolish patronage, but merely transferred it to the heritors and elders. The light in which the boon was then regarded by the people of Scotland, might, he said, be gathered from the fact, that in only three parishes, from the year 1690 to 1711, had the right of patronage

been purchased as the Act permitted. The Act of Queen Anne, 1711, restored patronage; and the fruits of its exercise had been to fill the pulpits of Scotland, as they were now filled, with pious, and worthy, and zealous men. It was, he said, very extraordinary, that these men, who had themselves come into the Church by patronage, should stigmatise it as unscriptural, and demand its abolition; and he thought the House of Lords ought to express its opinion, that this demand should not be complied with. He thought, that to return to the Act 1690 would, in the present state of circumstances, be very nearly to land in popular election and all its evils and corruptions, leading inevitably to the degradation of the sacred character. On the subject of independent jurisdiction, the Church, he said, had set up claims even more inadmissible. As the law exists, the Church of Scotland had a legislative power, by which she might enact canons or laws of her own, not opposed to the common or statute law of the land; but the demand now made was, that the Church courts should not be questioned for anything they may think fit to do. This power they were now usurping in spite of the law; as, notwithstanding the decision in the Auchterarder case, they were maintaining and proceeding upon an illegal act of their own; and were even punishing, by deposition from their sacred functions, such of their own members as had obeyed the law as laid down. And in this position they came to parliament, seeking legislative immunity from the penalties they were incurring! Irresponsibility on the part of the Church, he maintained to be altogether unknown in any Protestant country. In England the civil courts can control the ecclesiastical, and keep them within their properly spiritual province. The same principle, he said, pervades the Reformed churches of the Continent. It was recognised in England even in the high and palmy days of Popery; and in Scotland, it was clearly admitted by Knox and the other fathers of the Reformation; and embodied, moreover, in the Confession of Faith. Great errors, he said, prevailed in regard to the position of the Sovereign as the head of the Church of England. In England, as much as in Scotland, the Lord Jesus Christ is acknowledged as the great Head of the Church; and in point of fact, there were acts, in regard to the Church, and her government and discip-

line, which the Sovereign of his own authority, and in his ecclesiastical character, could not perform—acts, which can alone be done by the legislature; and which, being done by the legislature, the Sovereign himself, as well as the subject, is bound to obey. To exempt the Church courts from similar obligations, would be, he thought, most preposterous, as it would be a total change in the constitution of that Church as established by law. The consequences of such an assumption might not, he said, be the resuscitation of all the abuses which grew up from that same root in the Church of Rome; but the yoke of the Church might again be made most galling, and its burden most intolerable, if such demands as were now made were conceded: and he wished the eyes of the persons making these demands to be opened, by the adoption of such resolutions as he was submitting. He had also seen it asserted, that, following out the course of resistance to the law, on which they had entered, the majority of the General Assembly were to proceed against the minority, even to deposition; and in the end to dissolve the connexion between Church and State. Such an obvious setting of the law at defiance was, no doubt, an impossibility; and the attempt would appear to him to border on treason and rebellion. Those who were bent on this course ought rather, he thought, to imitate the example of the Erskines of other days, and to secede at once from the Established Church. Their complaints, with which Scotland was now ringing from one end to the other, and with which they were besieging the crown and the legislature, were most groundless. Every disposition had been shown by all, to whom they applied, to extend the voice of the people in the choice of their ministers, and the power of the Church courts over the question of a minister's suitableness; and there existed in no quarter—certainly not in the House of Lords, or in the other house of Parliament—any inclination to oppress the Church of Scotland; but on the contrary every desire, as they regarded her with high and unfeigned respect, to render her, if possible, still more efficient than she had been as an instrument of good to that country. He regretted to see that there were some within that Church, who, if they did not get their extravagant claims granted, were prepared to bring down the Establishment,

careless of the mischief they would do, not only to the Church, but to religion itself; equally regardless of the divisions and animosities which they would introduce into families, and the wounds they would inflict on the very vitals of society. The noble and learned lord concluded by moving five separate resolutions, embodying the views and principles which he had laid before the House.

The Earl of Aberdeen called upon the House not to concur
 27. in the resolutions moved by the learned lord. He
 Lord Aberdeen. did not think their adoption could be attended with any benefit; and he had strong objections to discuss abstract resolutions when before the House in a shape so difficult to deal with constitutionally. These resolutions conveyed no information to the Church of Scotland which she did not already possess, as the determination of the House of Lords, to withstand the preposterous demands that had been put forward, must be known to every one. The third resolution, that the demands of the Church should be conceded by the legislature, as far as the same could be safely done, consistently with the permanent welfare of the Church, left the House and the Church in uncertainty as to what was to be conceded, and what not; and, he thought, committed it most dangerously, while there was no complaint against patronage, which it also went to uphold. He would not, moreover, consent to sanction, even by implication, any such assertion as that pastors had not been found proper to edify the congregations to which they had been presented. The fourth resolution pledged the House to maintain patronage; and to this he, Lord Aberdeen, believed not a single member would object. But to adopt a resolution to that effect might nevertheless be injudicious, and might tie up their hands. The General Assembly had come to a resolution that patronage ought to be abolished; but its abolition was not made by the Church a *sine qua non*, in coming to a settlement of existing disputes; and he had no hesitation himself in saying, that he would rather see the abolition of patronage than the legalisation of the Veto. So far as the last resolution went, acknowledging the exclusive jurisdiction of the Church in matters spiritual, but withstanding the demand that she should have absolute authority,

in every case, to define her own limits, he thought the learned lord would find himself deceived, if he imagined that the adoption of this resolution was to clear the way for a settlement. The Church would deny that she had sought the absolute and exclusive jurisdiction which was ascribed to her: she would deny the facts on which the resolution rested, and an interminable controversy would be engendered. But this resolution also referred to what might come before the House in its judicial capacity; and although it was competent to say, that the law should not be altered, it was not competent, in this shape, to say what the law might be, on a case brought before them in their judicial character. On all these grounds, he was clearly of opinion, that the House ought not to adopt the resolutions before it. With respect to the present state of the Church of Scotland, as alluded to by the learned lord, he (Lord Aberdeen) would merely say, that he had himself attempted to carry a measure through parliament which he believed would have proved satisfactory, but which had been rejected by the General Assembly of 1840. His object, he now stated to the House, had been to extend as much as possible the right of the people to object to a presentee, and the power of the presbytery to judge. He believed that, substantially, all objections by the people should be founded on the literature, life, or doctrine of the presentee; and those who asserted any other power of objection, went, he thought, beyond what the history of the Church warranted, or what was sanctioned by the opinions of the most learned persons. His measure accordingly proposed, that, "if on any one or more of these points the parishioners objected, the presbyteries should, if the objections were found valid, allow of them; and further, if any large portion of the parishioners should object to the presentee, on grounds not in themselves strictly valid, but entertained by so large a proportion of the inhabitants as to preclude the possibility of his edifying them, or promoting their spiritual welfare, they should have the power of urging the objection, and the presbyteries have the liberty of rejecting;*"—always, however, recording the grounds of their

* Comparing this account of his proposed bill of 1840, as furnished by Lord Aberdeen himself, with the bill which he introduced and carried in 1843, one can-

rejection; as otherwise, he said, there would be a practical establishment of the Veto law. He was aware that there might be many objections, not altogether personally impeaching the presentee, but which yet, as affecting the probability of his profitable ministrations, ought to be taken into account; and he remembered, he said, some instances of this kind,—cases, in which there were strong reasons for thinking that ministers would not labour profitably in particular parishes—a consideration of which it was always intended that presbyteries should have the power of judging, and as to which the numbers of those objecting had a great deal to do. “Thus,” added his lordship, in illustration, “if a minister were objected to as incapacitated, from feebleness of voice, from rendering himself audible to the mass of his congregation, such an objection would, of course, be worthy of consideration when urged by a majority, or a large portion of the parishioners; and he thought the power of rejection on such grounds was one very salutary in its operation.” The Church, in his opinion, abandoned a solemn duty, when she handed the province of judging over to the people; and the people, on the other hand, whether a greater or a smaller number, had a right that their objections should be given effect to, if in themselves, in the judgment of the presbytery, good and valid objections. His bill had proposed to give no powers to the Church, in the exercise of which she would not be restrained by public opinion; while it greatly extended the privileges of the people, as enjoyed under the Act 1690. He did not think that, under this bill, any illegal objections could be admitted; but while he provided for the judgment of presbyteries being subject to the review of the superior Church courts alone, he never contemplated that the civil should be shut out from entertaining the question, whether the objections on which these judgments rested were legal or not. Whether any concessions, that could now be made, would avert the threatened disruption of the Church, he could not pretend to say; but the conduct of the

not fail to be struck with the fact, how much the latter curtailed the popular rights acknowledged by the former, in the settlement of a minister. That the bill of 1843 should have been hailed with satisfaction by a section of churchmen who had rejected that of 1840 as Erastian, is a matter of no little surprise.

leaders of the agitation gave but little hope. At a recent public meeting at Edinburgh, he observed that these leaders had announced, that if the Non-intrusion ministers did leave the Establishment, they would take every means to injure and destroy it. He could not, indeed, believe that such feelings and language as were displayed at that meeting, could find the sympathy of the people of Scotland; but it was difficult to say to what extent they shared in these sentiments. He was not, however, without hopes that the Church of Scotland would prevail over her enemies. He was persuaded that the agitation was a clerical agitation; and the "glorious campaign of preaching," which had been predicted, in the event of a disruption, was no doubt necessary, he said, to keep the people in a frame of mind to answer the purposes of the agitators.

Lord Brougham had felt that, while proceedings were going on
28.
Lord Brougham. in the courts below, which had been, or might be
appealed to the House of Lords, he was bound to
abstain from addressing himself to the subjects brought under
notice by the Resolutions; and he would willingly have confined
himself on this occasion to what he had already said, that the
majority of the Church of Scotland had acted in the grossest, and
most lamentable, and most reprehensible manner, not only as
ministers of the Gospel, but as subjects of the realm. Until they
purged themselves of the contempt in which they stood towards
the supreme court in Scotland, it was not new laws that ought to
be spoken of; but it was obedience to the old, that ought to be
enforced. He was obliged, however, to break through the rule he
had laid down, by the remarks which had fallen from the noble
secretary, Lord Aberdeen, and which appeared to him to throw a
doubt on the judgment of the House of Lords in the Auchterarder
case; and consequently calculated to impugn the reliance which
the people of Scotland ought to place on all the judgments of that
House. He was quite aware the noble earl did not mean anything
of this kind; but he had, in his legislative capacity, found fault
with judgments which every law lord in the house had agreed
fixed the true state of the law, as it stood on the statute-book.
That judgment was their unanimous opinion of what was the law
of the land. They affirmed an appeal made to them by the very

parties who, if their lordships had decided in their favour, would have been the first to laud them as a tribunal whose judgments were worthy of all acceptance ; but who, the instant they found that the judgment was against them, discovered that they were Erastian judges !—whose opinion was not to be followed, but was, on the contrary, worthy of all reprobation ; and which Scotland, as a matter of course, was to resist, even although it was a hostile resistance to the law of the land. That judgment, however, he (Lord Brougham) would still uphold ; and it was only so far as the noble Secretary of State's speech trenched upon it, that he felt disposed to say anything on the question before the House. The noble earl had described his bill as intended to give to the people the right to see, not only that the minister to be appointed to the parish be a man whose life is free from reproach, whose theology is satisfactory, and whose learning is indisputable ; but they would likewise be entitled to judge of his fitness—of his suitableness for their particular parish. He regretted that it should have become necessary to adopt terms, in his (Lord Brougham's) opinion, so vague and inaccurate. The parishioners, it seems, were to judge of the fitness or suitableness of the minister whom the patron had appointed ; but, neither from the bill, nor from any other source with which he was acquainted, could the parishioners acquire the knowledge of any rule or canon by which they could judge of that fitness. He denied that the people had, by the law of Scotland, the undefined power to judge of the agreeableness or the disagreeableness—for it came to that—of the minister presented to them. The noble secretary had said, that there had been many instances, in which presbyteries had exercised a right of judging of the fitness or unfitness, the suitableness or unsuitableness, of a minister. If so, it was strange that nothing of this kind had been hinted at, in the late judicial proceedings before the House ; and certainly nothing could serve better, than the establishment of this principle, to prop up the Veto. He (Lord Brougham) might be an Erastian ; but the noble secretary was almost a Non-intrusionist. The doctrines of the noble earl (Aberdeen) would go to destroy patronage, as by law established ; and to destroy patronage, as by law established, we were told, was to declare the law

of the land ! He regarded a power in the presbytery to judge of the fitness or unfitness for a particular parish, as altogether incompatible with patronage. His noble friend, the Foreign Secretary, would establish this principle by his bill, and really avowed it in his speeches, that he would not have any minister forced upon the people of a parish : No matter what might be the nature of the objections to the minister, the noble earl would have nothing but an harmonious call ! Now he (Lord Brougham) would ask, if this was either more or less than the Veto Act ? The Veto Act, it might be said, gave to the communicants the power of judging ; but his noble friend would give to the parishioners the power of objecting, and bringing their objections before the presbytery. Could any man in his senses, he asked, call that a declaration of the present law of the land ? Could it even be called anything else than a complete annihilation of patronage ? If the Auchterarder case be law, the so-called declaratory bill of his noble friend would be anything but a declaration of the law. He begged it, however, to be recollected that he (Lord Brougham) was dealing with the proposed measure, as an alleged declaration of the law as it exists. On the expediency of altering the law legislatively, he was not speaking. In the mean time, were he ever so much satisfied that the Resolutions before the House, or the bill of the noble earl, would settle the affairs of the Kirk, he would pause until the wrong-doers abandoned their evil courses—until they were compelled to obey the law—a course, in which he had the authority of the Lord Chief Justice to say, that he entirely concurred.

The Earl of Haddington vindicated the speech of the noble
 29. Secretary of State, and the letter of Sir James
 Lord Haddington. Graham, from the charge of shaking or invalidating the judgment in the Auchterarder case. He, as well as the noble and learned lord, (Brougham,) could conjure up imaginary cases ; and he certainly thought that unsuitableness would apply to a minister presented to a Church so large that he could not be heard beyond a few pews from the pulpit. If such cases were not already provided for by the law, the question ought certainly so far to be settled. He agreed with the learned lord, that the Church was bound to obey the law ; and if the Veto Act were repealed by the

General Assembly, peace might yet be restored. But the adoption of the Resolutions before the House would not tend towards this most desirable object, nor would this have any effect in putting limits to the threatened secession. But while he had his fears of the impending mischief, he was not without hopes that many, who had resolved upon secession, would yet be induced to abandon their purpose. From the bill of the noble earl, (Aberdeen,) he had anticipated the greatest benefits, as it would maintain the rights of patronage, which he did not desire to see abolished, and would, at the same time, provide for the powers of the Church courts and the privileges of the Christian people.

Lord Cottenham said he now regarded the question in connexion with the Church of Scotland, not as it was
 30. Lord Cottenham. originally, a question of patronage, but one of far greater importance, a question of jurisdiction. He certainly thought the people of Scotland had little to complain of, if the letter of the right honourable the Secretary in the Home Department, to the Moderator of the General Assembly, had rightly set forth the law and constitution of that country. By that law, the Church was bound to admit the qualified presentee of the patron; and the same law had declared what qualification was—namely, sufficiency of literature, orthodoxy of doctrine, and morality of life. He nowhere found suitableness enumerated or referred to, as it had been defined by the noble earl (Aberdeen;) and during the hearing of the Auchterarder case, counsel had never once hinted at such a right on the part of the people, as to object to a presentee that he was not qualified in law, because he was not suitable to the particular parish. The noble Secretary, no doubt, said that the practice had fallen into desuetude; but in this case its origin might be shown, and the period at which it had ceased to be acted on might be pointed out. This, however, had never been attempted. He (Lord Cottenham) approved of patronage, guarded by sufficient checks on the part of the Church, and he should be sorry to see it transferred to any other hands than where it was. But he was very anxious to state his view of the law of the case, and to express his regret that any question should have been raised as to this point. He hoped that

it would be understood, that in regard to the law, as laid down in the Auchterarder case, there did not, among lawyers at least, exist a difference of opinion.

The Resolutions of Lord Campbell were not pressed to a division
 31. by his lordship. The debate to which they had
 Resolutions with- given rise had, however, elicited views of both the
 drawn. law and policy of the State in matters ecclesiastical, by which those who were now guiding the councils of the Church of Scotland must have been warned of impending dangers; and which must, doubtless, have pointed out to them how vain were all their hopes of re-constructing that Church on the principles for which they had so strenuously contended, and to which they had so fatally pledged themselves.

The Convocation, and its resolutions, was the last great card
 32. played by the Non-intrusionists in the game in
 Final position of which they had engaged; and the refusal of the
 the Non-intru- House of Commons to grant the committee sought
 sionists. by Mr Maule—in other words, to sanction the principles on which alone the majority of the Church had solemnly declared that they could remain within the Establishment—decided the course of conduct which now remained for them to pursue. The appeal, which had been taken to the House of Lords against the judgment of the Court of Session in the case of Stewarton, and which had found that the ministers of *quoad sacra* churches had no seats or *status* in the Church courts, was abandoned;—a step which created not a little surprise, after the pertinacious manner in which the case had been litigated in the Court of Session, and considering that the bench had been divided upon the point. It was now, however, made clear to every one, that the appeal in this case had never been taken with a *bonâ fide* determination to follow it up, but with the view of securing, if possible, the seats of the *quoad sacra* ministers and elders, who might be returned to the next Assembly, which would meet before the appeal could be disposed of. When, however, there arose cause to apprehend that the Court of Session would grant interdict, if sought, against these ministers and elders taking their seats, notwithstanding the appeal, the object in view was defeated, and the appeal was fallen from.

Fresh vigour was, in the mean time, displayed in obtaining pecuniary contributions over Scotland towards the funds, destined to provide churches and stipends for the ministers who were about to relinquish their state-endowments; and the singular spectacle was exhibited of a building being erected in Edinburgh out of these funds, for the avowed purpose of accommodating the Separatists, when met in their own Free Assembly. That all these "divisive courses" should have been taken by men who were still within the pale of the National Church, was passing strange; and only to be outdone by the effrontery with which they persisted in holding up their Moderate brethren as driving them out of the Establishment! By not a few, indeed, of the Non-intrusionists, it was believed that the bold and decided announcement of their purpose would lead to concessions, that would still retain them in the Church; and this hope was not relinquished by some until the very last moment.

The disestablishment of the Church—the disruption of the union existing between the Church and State, were the consequences, to which the leaders in this movement had always looked forward, as following the refusal of their claims; and it was generally understood that, on the meeting of the General Assembly, they would attempt carrying out this consummation by a vote, under the name and authority of that venerable body. It was, indeed, obvious to every one that, in its legal effects, such a vote would be nugatory; and it might be problematical whether her Majesty's Commissioner would permit it to be put—his constitutional right of dissolving, under a contingency which would so directly assail the prerogatives of the Crown, being undeniable. The leaders of the Church had, indeed, seen fit to go back to the principles and precedents of the Second Reformation; but the representative of the royal person in the Assembly might see proper to stop short at the more legally settled times of the Revolution. But be this as it might, it was manifest, that the moral effect of such a movement would be very pernicious to the Establishment; and as it had been gravely proposed, and might be attempted, before passing such a vote, to excommunicate the whole Moderate party, the most strenuous exertions were made on the other side to defeat this project. All eyes were now turned

33.
Objects contemplated.

towards the coming Assembly; and several desertions from the Non-intrusion ranks gave token, that the intending Seceders would be left in a minority in the great question of disuniting the Church from the State, and accomplishing what alone could be called a "disruption" of the Church. The step resorted to by the Moderate party in several presbyteries, of the minority first protesting against any *quoad sacra* ministers voting on the election of representatives, and then constituting themselves into the legal presbytery, as alleged, and making, in this manner, double returns to the Assembly, frustrated all the hopes of the Non-intrusionists of carrying the vote, to which they had looked forward; and so far as it plainly implied, and as plainly intended, an appeal to the civil power in a matter ecclesiastical, was just such an act as had subjected probationers to the loss of license to preach the gospel, and clergymen in orders, to deposition from the office of the holy ministry. It was certainly a dexterous and a legitimate move, on the Moderate side of the Church, to make returns to the Assembly, uncontaminated by the illegality which the decision in the Stewarton case had fixed on all such, as might be made by presbyteries, where *quoad sacra* ministers were still recognised; and it seems to have been altogether unexpected by the dominant party in the Church. As the north had all along been distinguished for disobedience of the spiritual edicts of the Church, so did this well-contrived move, to stay the contemplated separation from the State, originate with the Presbytery of Fordyce;—an example, soon afterwards followed in other quarters of the Church. By this step—itself in thorough contempt of all ecclesiastical authority—the very instruments to which the Non-intrusionists had had recourse, in order to strengthen their cause in the Assembly, were turned into the most formidable weapon for bringing it down; and the grand design of going out, under a vote of the General Assembly, was, by this means, more signally defeated than by any other; and mainly determined them to carry into effect the Secession—for a "Disruption" could no longer be contemplated—before even trying their strength with the Moderate party on filling the chair. They had, long before, selected Dr Chalmers, as the most distinguished of their number, to occupy the place of honour, for the second time in

his life ; and this, no doubt, they did, under the hope that his high name and reputation might secure him support, where his principles were not fully adopted. The Moderates were equally on the alert, now that the crisis approached ; and they fixed upon the Very Rev. Principal Macfarlane of Glasgow, who had also passed the chair, again to occupy the post ;—a gentleman well entitled to the honour, from his steady and consistent services to the Moderate and Constitutional cause. The attempt of a middle, or temporising party in the Church, to place in the chair some churchman of less “ violent and extreme opinions ” than Dr Macfarlane, was fortunately defeated, and, in spite of the intrigues resorted to on this occasion, the Church of Scotland luckily escaped from a position that would have thrown a doubt around the triumph which Moderate doctrines and views received on the election of the Very Reverend Principal.

Whilst these preparations were making on both sides of the Church
 31. for the coming contest, the dominant party lost no
 Course proclaimed. opportunity of publicly proclaiming what their course of procedure would be under the result to which they were now obliged to look forward ; and in this manner, more and more committing those, who had joined their standard, to abide the issue that awaited them. “ So sure,” said Dr Candlish, now the most active and distinguished of their number, when addressing a crowded audience at one of those platform displays, which had become an everyday occurrence—“ so sure, as the General Assembly meets on the 18th of May, will we bring matters to a crisis ;—so surely will the faithful men, who are now maintaining a testimony to great principles, on that day come to a conclusive determination as to the manner in which they will separate from an Establishment to which they can no longer submit.” “ When,” continued the same eminent divine, not very consistently —“ when we are driven forth from the Establishment, the same view of duty, which led us to leave it, will also of course lead us to aim at the overthrow of the Establishment that remains. That cannot be doubted. If we are honest in saying, that we cannot conscientiously remain in the Establishment—*erastianised*, we must, in carrying out our honesty, also say, than an *erastianised* Establishment ought not to exist.

We cannot say, hail fellow ! well met ! to the Establishment which remains. No ; we will be compelled—not by resentment—not by indignation—not by jealousy, but by the same sense of duty, which induced us to leave it, to become its sworn enemies.” “ We look forward to the time when there shall be raised in Scotland such a band of devoted men as, by moral compunction, shall make it necessary for the State to re-establish them in the possession of all their ancient privileges. This is the consummation which we desire.”

Several years have passed over, since this denunciation of the
35.
Reflections
suggested. erastianised Establishment was given forth by Dr
 Candlish, in the name of those who had by that
 time acknowledged him as their leader. It is due to the body of
 ministers and laymen who in 1843 separated from the Church of
 Scotland, to tell, that they have realised the prediction of Lord
 Aberdeen in his place in the House of Peers, that they would
 practically repudiate the hostility to the Church of their fathers,
 thus proclaimed by her clerical agitators. If they have not reci-
 procated the Christian and brotherly feeling, extended to them-
 selves by the body of brethren whom they have left, to all the
 length that undoubtedly lies upon them, they have not, on the
 other hand, enlisted under the exterminating banners at this time
 so boldly and so daringly raised ; and it must ever prove a sub-
 ject of pious gratification to the genuine disciple of Christ, living
 under the spirit and maxims of the Gospel, that Christians, who are
 widely apart on the subject of the civil magistrate's power *circa*
sacra, can meet and co-operate on the same stage, when schemes
 of public utility and Christian patriotism are to be promoted.
 At this moment the minister of the “ erastianised ” Establishment
 is found sitting at the same board of “ Evangelical Alliance ”
 with those who, in the heats and strifes of 1843, consigned him
 and his ecclesiastical polity to reproach and destruction.

CHAPTER X.

SECESSION FROM THE CHURCH.

THE General Assembly of 1843 met under circumstances of the
1. greatest excitement; and it was felt by every one,
Assembly 1843. that at length the crisis of the contest had arrived.
It was expected by some, that the proceedings would open with
a distinct declaration from the throne, which of the parties within
the Church was to be recognised by the Crown as "The Establishment;"—it having now become manifest to all, that with the
principles avowed and acted on by each of the contending factions,
both could not possibly be "the Church of the State." Not a
few entertained the hope, that her Majesty's Commissioner had,
even at this, the eleventh hour, come prepared with instructions,
so far to concede Non-intrusion and Spiritual independence, as, for
a time at least, to postpone, if not altogether to avert, the impending
evils of a wide-spreading secession; and some there were, who
soon afterwards took the step of protesting and leaving the Assembly
Hall, before the Assembly was constituted, under the belief,
that enough would be made known from the throne, on the subject
of future legislation for the Church, to warrant their coming
back, and again taking their seats within it. Nothing, it
may be remarked, could more clearly indicate the inextricable
confusion in which the Church question had by this time become
involved, than these vague and unsatisfactory conjectures—these
undefined and undefinable hopes of such an interference by the
Crown, as would one way or another terminate discussion within
the walls of the Assembly.

The conjecture has been hazarded, that had either of the parties
in parliament, who opposed the Claim of Rights, been aware of the

extent to which the Secession was to proceed, they would have^{2.} hesitated to force on, as they did, the final
 Erroneous con- catastrophes. Those who entertain this opinion,
 jectures. speak of the alternative being that "of breaking up the Church of Scotland;" and this they paint as "too serious, even in its immediate results, and far too alarming in its remoter consequences," to have been preferred by our statesmen to conceding her demands. Her Majesty's government, on whose course that of parliament depended, were well aware of the certainty of a Secession, in the event of the Claim being refused; and it was understood, that they calculated its amount at somewhat about sixty or seventy ministers, who had gone too far in their opinions and pledges to recede. The section, to whose exodus from the Establishment they looked forward, comprehended undoubtedly the names of not a few very distinguished and talented ministers; but her Majesty's government, so far from regarding their secession as "a breaking up of the Church of Scotland," looked upon it as an event to give at once peace, stability, and renewed usefulness to that Church. That the leaders were in the end accompanied by a body of adherents altogether beyond what was expected, was certainly true; but this could have only shown her Majesty's ministers, that the poison, which required to be eradicated, was more widely diffused than they could have believed. Numerous as were the vacancies created in the Church, they were speedily supplied by ministers, every way worthy of being compared in theological literature, professional acquirements, and pious zeal and diligence, with those who had left the Establishment. To speak, as has been done with singular pertinacity and injustice, of this *Secession* as a "disruption" of the Church of Scotland, is not merely a gross and manifest misapplication of terms, but, in every sense of the word, a most disingenuous and unworthy perversion of the fact.

According to custom, the Moderator of the former Assembly^{3.} delivered a sermon in the High Church, in the pre-
 Sermon by Dr presence of the Marquis of Bute, again appointed to
 Welsh. represent her Majesty in the General Assembly of the Church of Scotland. At the very commencement of this sermon, Dr Welsh

intimated, that a fearful schism in the Church had become inevitable; and that the controversy, which had so long distracted both Church and country, was now about to be brought to an issue. He was understood to have intimated already to the Marquis of Bute, that the party to which he—the ex-moderator—belonged, had resolved to protest and separate, before the chair of the coming Assembly was filled; and he had probably learned from the Commissioner, that his Grace had no such instructions from the Crown, should they await the opening of the Assembly, as would meet the demands they had put forth. Dr Welsh might have, therefore, felt the more fully warranted in telling the congregation met in the High Church,—“a fatal rent is to be made in the walls of the pleasant house, where we and our fathers have worshipped, and which has so long been a glory and a defence of our land.” Had he been referring, however, to what the General Assembly was to do when it convened, he would manifestly have been guilty of a breach of order and propriety; as he must necessarily have been ignorant what course that venerable body would pursue. He was, consequently, to be understood, as merely speaking of the line of conduct to be followed by a certain party in the Church, with whom he had himself all along acted; and with whose intentions he was, therefore, well acquainted. But how far it was the duty of the preacher, in the circumstances in which he was placed, to speak of that party, as being about “to proclaim their sentiments to the world, and to seal their declaration by an irrevocable act,” may very reasonably be questioned; and did not fail, at the time, to be noticed with disapprobation. It certainly appeared like taking advantage of the situation in which, as the Moderator of the last Assembly, he chanced to be placed; and it will scarcely be denied by the candid and impartial looker-on, that it would have been in better taste and keeping, if Dr Welsh had abstained from such direct announcement from the pulpit of a mere party-movement in the Church.

When, after sermon, the reverend Professor took the chair in St ^{4.}Assembly meets. Andrew’s Church, the attendance on both sides was unusually large; the double returns from many presbyteries having swelled the number, claiming to be members, far beyond the usual amount. The galleries, set apart for the public, were crowded with

spectators anxious to witness the proceedings; and, as it had by this time become known that a separation would take place, considerable numbers of people were collected at the Church door, to see the expected procession on its way to the new Assembly Hall at Canonmills. After prayer by Dr Welsh, as chairman of the meeting, and before proceeding to elect a Moderator, and constitute a General Assembly by receiving the Queen's commission, the reverend gentleman begged permission to read to the meeting a paper, which he held in his hand, protesting for leave to the subscribers to retire to a separate place of meeting, for the purpose of taking steps for themselves, and all who should adhere to them, for separating in an orderly way from the Establishment. This docu-

5.
Protest.

ment or Protest was signed by a large body of ministers and elders, who had been chosen to sit as members of Assembly; and, when read, was laid by Dr Welsh upon the table: when the reverend chairman, bowing slightly to the Marquis of Bute—who was personally, although not officially, present—left the Church, followed by the reverend Dr Chalmers, Dr Gordon of the High Church, Edinburgh, and almost the whole of the members, both clerical and lay, occupying the benches on the left side of the throne. A great number of the spectators in the galleries also left the Church; and some time elapsed before silence and order were restored.

As the parties, who thus saw proper to refrain from appearing in

6.
Object of the
Separatists.

their places, as members of the General Assembly, to which they had been returned, and who now felt called upon to disburden themselves of a character and a status, which they certainly had no authority to lay aside under the commissions they had received, might clearly have congregated together in “a separate place of meeting” without the leave, for which they now protested, from a body having, as yet, no public authority either to give or to withhold this permission, their proceedings on this occasion were justly liable to the suspicion that they desired, by all these preliminary steps, to lead the public astray, as to the real position which they occupied. Had they waited, until the Assembly was duly constituted by the election of a Moderator,

the receiving the commission of the Queen, and the purging of the roll of returned members, the Protest would then have been given in to a recognised ecclesiastical body ; and this document, as well as the act of " withdrawing," would have been clothed in all formal and official importance. But there were many manifest objections to this course of procedure, where the object in view was to exhibit to the country the appearance of the majority of the General Assembly—the Church representative herself—voluntarily breaking up her connexion with the State ; and thus justifying the language, which they have always and very tenaciously employed—" a disruption of the Church." A great number of those now protesting as members of Assembly, had been illegally and incompetently returned ; and it was well known, that their seats could not have been made good. The result of a deliberate vote of " separation from the Establishment " could not, therefore, be doubted, if brought forward in the House ; those who supported it must, in the end, have stood forth a mere dissenting minority ; and the act about to be perpetrated would have sunk from a seeming disruption of, to a simple secession from, the Establishment ! The decision in the Stewarton case had solemnly adjudged, that the ministers of *quoad sacra* churches were not ministers of the Church of Scotland, known to the law, and could not sit in any of her courts. The same judgment had necessarily ruled, that members returned to the Assembly by presbyteries, in which *quoad sacra* ministers had been permitted to vote, were incapacitated from taking their seats if challenged on this ground ; and these interlocutors of the Court of Session, although at first appealed from by the Church to the House of Lords, had, by this time, become final, by the withdrawal of the appeal, when all question or doubt as to the immediate obligatory nature of the deliverances was set at rest. When interdicts were threatened to be applied for against *quoad sacra* ministers taking their seats in the Assembly, even during the appeal of the Stewarton case, and it was understood that they would be granted, one great object in persisting in this appeal—namely, that of securing a majority of votes in the Assembly—was defeated ; and the party, bent upon a separation from the Establishment, were driven to the mode of

carrying it out which they adopted—a mode, giving as much as possible the appearance of a transaction by the Church representative, and within the walls of a General Assembly, but having, in reality, no such elements in its composition, even although heralded in by proclamation from the pulpit of the High Church.

The movement, at length carried into execution, had been so long anticipated, and was but another in the strange and multifarious acts of the drama, that had been before the public gaze, that it evidently failed in making the impression expected from it. It was well known, that one spacious hall had been built, at no trifling expense, and another still larger had been rented, for the accommodation of those who now left St Andrew's Church; and no one was taken by surprise when the movement did occur. It served the purposes of the seceding party to represent the interest taken by the public in Edinburgh, on this occasion, as most intense; and the most graphic descriptions of the procession from St Andrew's Church to Canonmills afterwards appeared in their newspapers and other organs, giving a very exaggerated picture of the scene. The same exaggerations have found a place in works of a graver and more permanent character; and it was perhaps to be expected, that the biographer of Dr Welsh, who took so prominent a part in these transactions, should, in painting occurrences, give a warmer tint to his colouring, than the soberness of history can sanction. In truth, the most remarkable feature in the picture was the comparative apathy, with which the whole procedure was regarded, after the very strenuous exertions that had been made to get up a spectacle. Nor was the meeting of ministers and elders of the Establishment at any loss, how to proceed in the absence of the seceding brethren. No wish was displayed to divert them from their purpose: the leave for which they had protested could not have been refused, and in itself constituted no overt act of schism; and no attempt was made to induce them to remain. As they had only left the meeting, in order to reassemble in another place, to consider how they might separate in an orderly manner from the Establishment, there was time, no doubt, if it was thought expedient, to enter into negotiations for their return. The Free Church annalists of this period,

7.
Movement misre-
presented.—As-
sembly constituted.

and the biographer of Dr Welsh himself, speak of the proceedings on the 18th May, as having taken place in the General Assembly of the Church of Scotland, and in presence of the Lord High Commissioner, who, according to them, "had already mounted the throne;" but it is of importance to recollect, if we would reach a right apprehension of these occurrences, that the Protest was not read, nor did the secession take place, in at least the official presence of her Majesty's representative. When his Grace, properly speaking, "ascended the throne," and acquired a *status* within the Assembly, the schismatic body had left the place of meeting; and the Assembly itself did not come into existence until the election of the Moderator—an event, which the seceding body did not await. The important bearing of these facts upon the assumed disruption of the Church of Scotland, which is said to have occurred on the 18th May, will easily be perceived. The Assembly of that day, when duly met and constituted by the election of a Moderator, and the delivery of the letter from the Queen, witnessed nothing but the ordinary initiatory steps to business taken upon ordinary occasions. It was not, strictly speaking, until the 24th of May, that there was laid upon the table a Deed of Demission and Separation, intimating that a great schism had taken place in the Church; and the Assembly would undoubtedly have acted more regularly, as well as escaped from what afterwards embarrassed it, if it had taken up the case of the Separatists upon this document alone, and left altogether unnoticed the protest, which had been tendered at the meeting previous to its constitution. At that meeting the General Assembly had not been constituted; and the deed, which had been perpetrated, was the act of a body of individual ministers and elders, very disorderly indeed, but, at the same time, of men having as yet no recognised or representative character. Accordingly, so soon as order was restored, Dr Mearns of King's College, Aberdeen, rose and moved that the very Reverend Principal Haldane of St Andrew's University should take the chair, which had just been vacated. The roll of members was then read, including those who had removed from the meeting. It was then moved by the chairman, and seconded by the Earl of Selkirk, that the Very Reverend Principal Macfarlane of Glasgow University should be

elected Moderator. The Lord Commissioner, the Most Noble the Marquis of Bute, then gave in his commission in common form, along with the letter from her Majesty the Queen, and the General Assembly 1843 was forthwith fully constituted.

The letter from the Queen to the Assembly differed on this
8.
Letter of the
Queen. occasion very materially from the royal communications made in former and less troublous times.

The Sovereign had hitherto been accustomed to be both brief and complimentary to the Church of Scotland, in authorising the meetings of her General Assemblies; but the present communication from the throne was couched in terms of more than ordinary earnestness and anxiety, created in the mind of the Queen by the state of the Church, and the dissensions that had so unhappily disturbed its peace. It was also evident, that her Majesty expected that this letter would have been listened to by those who had seen proper to desert their posts before its communication; for to the vast majority of the ministers and elders who remained, the good and graciously conveyed advices, which it contained, were so far happily inapplicable; and the principles of conduct, to which the Queen recommended the Assembly to return, were precisely those on which they had uniformly and consistently acted. The Assembly were reminded by her Majesty, that unity was the bond of peace; but that schism, and its pernicious effects, must tend seriously to injure the religious Establishment, from which Scotland had derived such inestimable blessings: and they were told, that, as the rights and property of the Established Church are enforced and protected by law, so are her clergy bound to be examples of obedience to that law;—a remark, which must have been felt as falling like a reproof upon some who listened to it, and who, although they had not followed the example of Secession, which had just been set before them, had, up to this time, occupied the position of disobedience and disrespect of the law, to which her Majesty alluded. As if fearing that the measure, which had been threatened, would be attempted, the Queen further reminded the Church, that the settlement fixed at the Union between Church and State in Scotland, was indissoluble while the statutes creating it were unrepealed; and that it could not be terminated by the will or declara-

tion of any number of individuals; while, at the same time, the door of renunciation for themselves was open to those who were dissatisfied;—a hint from the Crown, that could not have been misunderstood by the leaders of the Church movement. Her Majesty further noticed, in this letter, that the Veto Act of 1834 had not been rescinded by the Church, although pronounced illegal by the competent civil tribunals; and the Assembly was reminded, that a conflict between the law of the land, and an act of the Church, where civil rights were involved, could not be prolonged without injurious consequences. Should parliament see fit to interfere for the better securing to the people the full privilege of objection, and to the Church courts the exclusive right of judgment, the Queen assured the Assembly, that she would be ready to give her royal assent to any such measure. The law, as regarded the ministers of unendowed churches, had been laid down, and her Majesty trusted would be obeyed, until considered and amended, if need be, by the legislature; and in announcing the Most Noble the Marquis of Bute as the representative of her royal person, her Majesty took occasion to make the remarkable, but easily understood, intimation—"he possesses our full authority for the exercise of our royal prerogative in all matters relating to the present Assembly, in which, in obedience to our instructions to him, he may be called upon to act for us, or on our behoof."

This remarkable letter from the Queen to the General Assembly

9. left not a doubt, that the civil magistrate possesses
 Remarks. far more extensive powers within that venerable body, than had been allowed by many of the popular writers of the day, and altogether put to flight the theory of the ecclesiastical constitution of Scotland, as painted by Dr Chalmers in his celebrated lectures to the nobility and gentry of England. It brought to recollection, not the times of 1638, when General Assemblies sat in defiance of the royal authority, but the days of William and Mary, when the Crown exercised the power of convoking, adjourning, and dissolving General Assemblies by its own independent authority; and it clearly indicated that, in case of necessity, such powers would again be put forth. It had, indeed, long before this, been pointed out to the Whig Administration under

Lord Melbourne, that, as a remedy for existing evils, the crown ought to call a meeting of the General Assembly for the express purpose of reinstating, in their ministerial and judicial functions, those clergymen who had been incompetently suspended and deposed by the Church, for yielding obedience to the law of the land; and, consequently, in the event of the Assembly not complying with this injunction, refusing its sanction to the meeting of this venerable body. The position of Lord Melbourne's Administration—then tottering to its fall—prevented this policy from being pursued; but that a course of procedure, founded on this principle, was in the view of their successors in office, may be inferred from the terms of the letter, with which his Grace the Commissioner was charged to this Assembly. Had those who, just before its communication, left the Assembly Hall, remained until the Assembly was constituted, and taken a part in its proceedings, and had they still persisted in sustaining the Veto Law on the statute book of the Church, and in upholding the right of the *quoad sacra* ministers to seats in Church courts, notwithstanding the judgments of the civil tribunals, and the interdicts which had been obtained, it seems clear that the Lord High Commissioner would have proceeded to dissolve the Assembly, under the very special instructions which he had received, to act for the behoof of the Crown and its prerogatives. The "men of the movement" in the Church of 1843 were, perhaps, by this time, in possession of the intentions of her Majesty's government, as to the steps at length to be taken by the executive; and it is possible, that they may have even received intimation, that a dissolution of the Assembly, if refractory, had been determined on; or they might have gathered from the Queen's letter—no doubt, made known to them—that such a step must follow their refusal to listen to its suggestions. But be that as it may, they were not prepared to imitate the men of 1638, and to sit in the name of the Great Head of the Church, and maintain her independence at all risks. They were not, like Henderson and his compeers of the Second Reformation, backed by a large body of rebellious nobility and gentry, struggling through the Church for the restoration of political rights and privileges, unconstitutionally withheld from them by a

weak and arbitrary monarch—himself beset, at the moment, by dangers that threatened the overthrow of his throne; and much less were they prepared, like their forefathers, to wage open war with the Sovereign in defence of “the liberties of the Kirk.” Many of them, indeed, had, during the contest that was now closing, taken delight in instituting a comparison between the Non-intrusionist and the Covenanter; and they had placed on the records of the Church a declaration, that they “would assert, and, at all hazards, defend,” their spiritual jurisdiction, “by the help and blessing of that Great God who, in days of old, enabled their fathers, amid manifold persecutions, to maintain a testimony, even to the death, for Christ’s crown and kingdom;” but the attitude which the State had, by this time, assumed, satisfied them that the parallel must, practically at least, be carried no farther than it had been; and hence the *deposed* members of the presbytery of Strathbogie, with their elder Edmonds, were permitted, at this Assembly, to lay their commissions on the table unchallenged and uncensured; while the gallant representative of the minority of this presbytery, who, amidst the acclamations of a former Assembly, and with the Bible in the one hand, and the interdict of the Court of Session in the other, had declared his resolution to obey the one by trampling on the other, preferred walking out with his brethren to a repetition of his empty, and, as he had found, somewhat hazardous bravado. On the other hand, to have remained to rescind the Veto Act—to re-instate the Strathbogie ministers, by declaring their deposition to have been a solemn mockery—and to exclude from their seats the ministers and elders of *quoad sacra* churches, would, on the part of not a few, have implied a forfeiture of everything like character and respect in the eyes of the Church and country. It had long, indeed, been felt that, under the contingency which the letter of the Queen so plainly intimated, the leaders in this ecclesiastical movement must secede from the Establishment; and if some—perhaps not a few—who had joined their ranks, could have found anything like a justifiable pretext for at length deserting them, it could only have been under the frank and honest confession, that they had permitted themselves to be deceived by sophistries and misrepresentations, to which their eyes were at

length opened. It was not, however, to be marvelled at, that, more especially in the very heat of battle, and while a hope was still artfully held out to them, that by perseverance they would prevail, these men should have hesitated until too late to make this confession; and hence the unexpectedly large secession which did take place. The great body of seceding ministers had been thrown into such a sea of agitation, and paralysed in their resolutions by such conflicting statements, and such modifications of the Church's demands, and such seemingly near approaches to a settlement satisfactory to all parties, that while many of them fancied, that they were only on the point of determining what they ought to do, they found they had gone too far with the desperadoes of their party to draw back. Had the hesitating and time-serving policy of Government been persevered in, on the other hand—and had the dominant party been encouraged, in this way, to persist in their course of defying the law, and maintaining the illegal edicts of the Church, the whole Moderate minority would of necessity have been treated at this Assembly, as had been the bishops in 1638, and deposed or excommunicated. This issue, in the event supposed, had not only been anticipated, but strongly urged upon the Church as unavoidable, if she had any regard for her character and consistency, and as equally demanded by discipline, rule, and practice, as by these more selfish considerations. The Moderates could as little, with honour to themselves, or respect in the estimation of the country, retreat from the ground of yielding obedience to the law of the land, which they had taken up; or from that of extending the same fellowship and communion to the Strathbogie ministers, which they already had afforded; and in these circumstances also their own expulsion from the Church would have been necessarily imposed upon the Assembly. If the result of such steps against the Moderate minority, as in the case supposed must have taken place, had not been as apprehended—the dissolution of the Assembly by the High Commissioner—the acknowledgment by her Majesty of the minority, as constituting the Established Church of Scotland, was regarded as inevitable. Thus the hitherto dominant majority had only before them a secession, which, appearing to the world as a voluntary act and self-imposed sacrifice, might

command some sympathy and respect, or a separation, which, forced upon them by the desertion of the State, could not, they might think, redound to their credit or advantage in any manner. The Non-intrusionists chose, perhaps, the wiser alternative; for the returns had rendered it doubtful at least, if they could have carried the nomination to the chair of the Assembly—much less if, under cover of a vote of the Church herself, they could have achieved the schism, which they perpetrated. They preferred, accordingly, to retire under an act, having no public or accredited character attached to it; while the brethren, whom they had left, remained, as a body faithful in their adherence to the law and constitution, as laid down by the civil courts; and the principles and sentiments contained in the Queen's letter found in the Church, as represented in this her General Assembly legally constituted, an honest, ready, and unanimous response. The sacrifices to principle, made by the seceders, were, in almost every case, very palpable and very extensive; and the nature of the act, as measured by the real necessities of the case urging to its commission, was in some degree shielded from public gaze and reprobation by the amount of the good things of this world, voluntarily given up, and by the seemingly pious and disinterested throwing of themselves and families on the wide world for subsistence. It was argued, and in a manner felt, by those who looked not beyond the surface of things, that, mistaken as the seceders were, it might be that—

“ The light which led astray
Was light from heaven : ”

and they experienced a sympathy which, without any breach of charity, it may well be doubted if all of them deserved. The statesman—who had withstood them, in their spiritual pretensions, as opposed alike to good order and sound religious feeling, and who had held them up as violating the laws, which they were under the strongest obligations, of all men, to reverence and respect—could offer this apology for them, the moment they stood forth a body large and influential enough, to demand his deference to their conscientious scruples, as an aspirant after political power and office. Posterity—a fairer and more impartial judge—may not bestow

what the time-serving politician so easily awarded; and certain it is, that it was not without considerable opposition, and, at one time, diversity of opinion among the leaders of the Non-intrusion body itself, that the final step of secession from the Establishment was resolved on. A short period before this resolution was come to, they are said to have met at Edinburgh in secret conclave, to the number of eighteen; and for some time, it is understood, were nearly equally divided on the question of separation from the National Church. A leading clergyman from the west country came up to this meeting, fully prepared to resist the secession, and armed with a ponderous pamphlet ready for circulation, and undertaken to prove, by sundry "Reasons," that no necessity for such a step had yet arisen; but the counsels of the bolder, and perhaps the more consistent faction, prevailed; and, with the exception of a single voice—and that the voice of a layman—the determination to protest and separate, was adopted.

After the Assembly had been duly constituted, and the ordinary
 10.
 Strathbogie Com- business was proceeded on, as if no secession had
 missions. taken place, the Committee on disputed commis-
 sions was appointed; and soon afterwards brought up, in its report, the question which had been regularly mooted at every Assembly since 1840—the right of the Strathbogie ministers, who were under alleged suspension and deposition, to take their seats as members. A suggestion was made, that the consideration of this question should be deferred, until the overtures, in regard to the Veto Act, should be disposed of;—a suggestion, to which some members of the house could not agree; as they could not, for a moment, recognise those as members of the Assembly, for whose deposition from the office of the holy ministry they had so lately voted; and whose right to sit in the Assembly they could not therefore render contingent on the decision to which the house might come on the Veto law. The Assembly appearing, however, almost unanimous in going into the proposal for delaying consideration of the question, and consequently resting the validity of the Strathbogie commissions on the deliverance come to on the Veto Act; and the delegates from Strathbogie agreeing so far to waive their rights, a lay member, Mr Bruce of Kennett, intimated, that it was impos-

sible for him, under these circumstances, to take any part in its deliberations; and he accordingly withdrew from the house. The position, in which those were placed, who had voted for or supported the deposition of the Strathbogie ministers, was, indeed, sufficiently perplexing; but they were so far relieved from it, on the question of the right of these ministers to seats under their present commissions, that the claimants themselves consented to waive consideration of this point, until the Veto law should be disposed of. If this act should be found to have been *ab initio* null and void, as set forth in the overtures sent up, it would follow, that all the proceedings arising out of it must be placed in the same category; and such members as Mr Bruce might have escaped through this door from the charge of inconsistency, in acknowledging the Strathbogie ministers, as still having seats in the Assembly. If indeed they were not prepared to declare the Veto Act, as having been from the beginning a nonentity, both civilly and ecclesiastically, there was perhaps no other course open to them to pursue, except to follow those who had already seceded.

The Assembly next proceeded to consider a series of resolutions
 11. brought forward by Lord Belhaven, in regard to the
 Resolutions of Lord Belhaven. important matter referred to in the Letter of the Queen. The first of these had respect to what this letter contained in allusion to the Act anent Calls of 1834, and was in these terms,—"That it is the opinion of this house, that the Act of Assembly 1834 should be rescinded, and that instructions be sent to all the presbyteries of the Church to that effect." A strong desire was manifested on all hands to avoid a discussion on the subject of the "defunct Veto law," and its "instant expulsion from the statute-book of the Church," as expressed by Dr Cook; who moved, in the end—"that presbyteries be instructed to proceed henceforth in the settlement of vacant parishes according to the practice which prevailed previously to the passing of the Veto Act, keeping in view the privilege of the people to object, and of the presbytery to judge." The Procurator did not concur in this motion; but brought forward an amendment—"that an overture should be transmitted to presbyteries, providing for the repeal of the act 1834—the said overture being, in the mean time, enacted into an

interim law." Lord Bellhaven said, that he was most desirous that the Assembly should come to an unanimous vote, as to the disposal of the Veto Act, in order to enable them to do what he was most anxious should be done—avoid going to the legislature at all; and Dr Mearns agreed with his lordship in the propriety of not putting any part of the constitution of the Church hastily before parliament. He had always held the Veto Act as a nonentity, and was quite prepared to support the motion of Dr Cook, which proceeded upon that principle. Dr Bryce argued, that as the civil courts, to which the Church herself had carried the question, had decided that she had no power to pass such an ecclesiastical statute as the act 1834, it was clear that, legally and constitutionally speaking, no such law had ever existed. And so far, therefore, as rescinding it, in the manner proposed by the Procurator, implied that it had a previous legal obligatory existence, he must object to the amendment, as not only in manifest and continued disrespect of the very tribunal to which the Church had appealed, but as carrying these still more important consequences along with it, that the sentences pronounced against the Strathbogie ministers had been both valid and well merited; and that he himself, and others, had been justly suspended for having held communion with these ministers after their deposition. Sir Charles Ferguson hoped, that it would not go forth to the country, that no act of parliament was needed to prevent a recurrence of evils. If the house were to be agreed about one thing more than another, it ought to be, that a bill should be introduced, to fix the powers of the Church in the matter of settling ministers. The law-lords of parliament, in their *obiter dicta*, and the discussions which had taken place there, had proved, he said, that the Church's rights in this matter were, indeed, very limited. Professor Hill, of Glasgow, did not think the Veto Act should be got rid of by a side-wind. He would be satisfied with the passing of an interim act, instructing presbyteries to send up their opinions in regard to the overture, which, he assumed, the house would transnit. Out of respect to the notice taken of the Veto Act, in her Majesty's letter, he thought something more should be done with it, than passing it over *sub silentio*. Dr Robertson was of opinion, that the motion of the Procurator compromised the real

independence of the Church, while that of Dr Cook had respect to it. He regarded the Veto Act as having, from the beginning, been really and truly a nullity; and, as the motion of Dr Cook proceeded on this principle, he was ready to support it. The Reverend Mr Gibbon of Lonmay thought, that the Church would stultify herself, and all her legislation, if she held the Veto Act to have been from the beginning "a nullity." She had only, he said, discovered it to be so, since the decrees to that effect had been pronounced by the civil courts; and he was of opinion, that the act ought to be repealed, as it had been enacted, by the consent of presbyteries. The Reverend Mr Storie of Roseneath, who had been all along opposed to the Veto law, as an unwarrantable interference with the judicial functions of those, who are appointed to rule in Christ's house, moved, "that the house should resolve, that the Veto Act be rescinded, and that a committee be appointed to frame an overture to this effect, to be duly transmitted; and that this Assembly pass the same into an interim act." The learned Procurator, upon this, withdrew his amendment in favour of that of Mr Storie; who, in his turn, withdrew his proposal, and allowed the original motion of Dr Cook to pass without a vote.

The Assembly came, on this occasion, to the only decision consistent in itself with the views uniformly entertained
 12.
 Remarks. by those who now constituted the majority, and calculated to remove the difficulties, presented by other cases, to be still disposed of. The obstacles experienced in coming to an unanimous vote, on the disposal of the defunct Veto, arose out of the position, in which a proposal to find it to have been *ab initio* a nullity, was felt to place those who had supported it on its introduction, and had voted for the punishment of such as had violated its enactments; while, on the other hand, to have held it to have ever been anything else would have been to acknowledge, that the Church now abandoned it at the bidding of the civil power; and, consequently, amounted to a surrender of her independent rights, whatever they might be, which the case did not demand. The Moderate party had, from the outset, protested, that they held this act as a nullity; a position every way consistent with carrying it into effect, as they had done, until judgment was given upon it by

the competent tribunals. They, therefore, merely occupied the ground, which they had always stood upon, when they acceded to Dr Cook's motion; nor ought those who were opposed to this motion, and insisted on having it admitted in the deliverance, that the Veto Act had been an entity, to have been so scrupulous; as the effect of the civil court's decision went back to the very moment of passing this act; and hence, nothing but an act of parliament, as afterwards obtained, could sustain as good, the settlements made under it, when disputed by parties having competent interest to call them in question.

The Assembly then proceeded to take up the commissions from
 13. the presbytery of Strathbogie, involving the question
 Strathbogie Com- of alleged deposition, to which the majority of that
 mission sustained. presbytery had been subjected. The reverend Dr Mearns opened the discussion, and argued, that as the sentence of deposition had proceeded on the assumption, that the Veto law of 1834 was valid, and within the competency of the Church to have enacted; and as the Assembly had found, by the vote to which they had come, that this act was *ab initio* null and void, the question before the house was in fact disposed of; and the commission came, as a matter of course, to be sustained. The great majority, now constituting the Church, had never regarded the ministers of Strathbogie as suspended or deposed; and many of that majority had received the sacrament of the Supper at their hands while under this alleged censure. The ministers themselves had not, he contended, as some had represented, appealed to the civil courts, to have a spiritual sentence reviewed and reversed; but they had availed themselves of the *refugium* in the civil magistrate, which all our Reformers held to be given, when justice was denied or violated by the ecclesiastical courts. On these grounds, he moved, that the sentences of suspension and deposition had been *ab initio* null and void; and that the ministers of Strathbogie were in possession of all their rights and *status*, as if no such sentences had ever passed. This motion was seconded by the Earl of Seafield. The Rev. Mr Storie of Roseneath objected to this motion, that it declared that what had been, had *not* been; and that a sentence, pronounced by the Assembly, was *not* a sentence! He maintained,

that the ministers of Strathbogie were bound to have obtempered this sentence as the judgment of the supreme ecclesiastical court; but what he now wished was, to obtain from these ministers an expression of regret at the consequences which had followed their deposition. This, he said, would open the door to their own restoration, and prevent, what he much dreaded, a still farther secession, if the motion of Dr Mearns should be simply adopted. As there had not yet, therefore, been any application from the seven ministers to be reponed, he would move, that the General Assembly did not judge it fitting, that the sentences standing against them should be removed in the manner proposed. The Rev. Mr Stewart of Lorn seconded this motion; but intimated, at the same time, that he did not mean to leave the Established Church, however it might be disposed of. It was argued by Dr Bryce, that if to have rescinded the Veto Act, and thereby to have admitted of its having ever been a statute of the Church demanding obedience, would have involved those, who had held communion with the Strathbogie ministers, in all the guilt that had been imputed to them; *a fortiori*, would these consequences follow, if these sentences were to be held as having, at any time, been good and binding. He must therefore, he said, support the motion of Dr Mearns, which treated them as a nullity. It had been asked, he added, how those clergymen, who had concurred in passing these sentences, and had held them up to their people, again and again, as justly imposed, but who still remained within the Church, could go back to their parishes, after a vote, that such sentences were mere *bruta fulmina*. He asked, in return, how those clergymen who had told their people, that although suspended from their judicial functions for taking the sacrament of the Supper from the hands of deposed ministers, they had never been guilty of such sacrilege, would face their parishioners, if they then acknowledged, in the remotest manner, that these ministers had been really placed under such a sentence. He would call upon the Assembly, by the adoption of the motion of Dr Mearns, to acquit those ministers of the very serious charge which had been brought against them, and of which they had been held guilty by the Assembly 1842; and he would leave those, who were now

members of the house, and had concurred in the justice of these sentences, to vindicate themselves as they best might. The reverend Mr Tait of Kirkliston could not agree to the proposition, involved in Dr Mearns' motion, that in reality no sentence of deposition had been pronounced. He blamed the presbytery of Strathbogie for not having suspended the settlement at Marnoch, and rendered obedience to their ecclesiastical superiors. He still more blamed the Church for having, in so summary a manner as they did, deposed the seven ministers; but he thought the only way of getting rid of the sentence, was to rescind it, as it stood on the records; and he hoped the Strathbogie ministers would express their regret, that they had been brought by circumstances into a position of appearing to have acted disrespectfully towards their ecclesiastical superiors.—Professor Hill of Glasgow, with the view of bringing these contending opinions somewhat nearer together, moved, that the Assembly should both rescind the sentences of suspension and deposition, and declare them to have been *ab initio* null and void.—At length the house divided—first, upon Mr Storie's motion as against that of Dr Hill, when the latter was carried on a division of 116 to 15. The sense of the house was then taken on the motion of Dr Hill, as opposed to that of Dr Mearns, when the latter was carried, and became the judgment of the Assembly, on a division of 142 to 33.

The ground taken by several of the speakers in this debate, that

14. Remarks.	the Strathbogie ministers ought to have obeyed the sentences of suspension and deposition, when passed against them, amounted, in fact, to the condemnation of these ministers for the act of obeying the law of the land, as declared by its highest tribunal. The less wonder was however excited, that mere clergymen, jealous of their own rights and privileges, should have taken so strange a view of the duty, which had devolved on the Strathbogie ministers, under the decrees obtained against them in the civil courts, when it was recollected, that their own counsel, Mr Hope, had long before attempted, although without effect, to conduct his clients to the same conclusion. But those who, on this occasion, argued like Mr Tait of Kirkliston, overlooked the fact, that although the Strathbogie ministers might have seen fit
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to act as they would have had them to do, there were third parties who had a right, under the law, to call upon them, and who did call upon them, to discharge their pastoral duties. Their parishioners could not be denuded of their legal title to these services, by such acts as the Church had seen proper to pass; and the refusal of these ministers to afford them to all entitled to them, by the laws of Church and State, must have incurred penalties, from which the General Assembly could not protect them. The reasoning, therefore, which imputed blame to them in the course which they had pursued, went in effect to justify the measures, which had been taken against them by the Church courts; and it gave but a sorry token of future peace in the Church, that there still existed any party within it, who could view the conduct of the Strathbogie brethren, in obeying the law of the State, in the light of ministers disobeying the law of the Church, supposing that party to be as sincere and zealous, in the maintenance of their opinions, as those who had just seceded. Fortunately for at once the character and the tranquillity of the Church of Scotland, the counsels of more firm and consistent churchmen, however much stigmatised as extreme and violent, were on this occasion followed; and the principles, which they had all along upheld, vindicated to all the extent to which they had been carried; while the more accommodat- ing section of ecclesiastics yielded to the current, and did not deem it incumbent to relinquish their livings, because Mr Allardyce of Rhynie, and Mr Walker of Huntly, whom some of them had assisted in attempting to depose from the office of the holy ministry, were now declared to have been all along within the pale of the Church of Christ; and when, of necessity, the sentence of deposition against them was, in effect, itself openly stigmatised by the Assembly, as a gross abuse of ecclesiastical authority!

After that part of her Majesty's Letter to the Assembly, which
 15. referred to the Act of the Church 1834, had been
 Resolutions brought
 forward in regard
 to the Chapel Acts. disposed of, as we have seen, Lord Belhaven
 brought forward another Resolution, in regard to
 that part of the royal address which touched on the rights of
quoad sacra ministers, as they had been set forth in the late
 decisions of the civil courts. This resolution called on the

Assembly to declare, that the acts of the Church 1833 and 1834, and 1839, by which ministers of chapels of ease, and others, became members of the Church courts of the Establishment, should be rescinded—the same having been incompetently passed ; and, at the same time, that a committee should be appointed to draw up a loyal address to the Queen, praying that her Majesty would be pleased to take into her serious consideration, the adoption of measures, to have these churches erected into legally and properly created parishes, and endowments provided for their ministers. The Reverend Mr Cook of Laurencekirk wished, that the noble lord's resolution had not admitted the acts referred to, as having ever been valid, seeing they had never passed through the Barrier Act, but assumed that to be the law of the Church, which had never been the law. It was held by Dr Robertson, that the downrightly honest and manly course for the Church to pursue, was to declare, as she must acknowledge, that the acts introducing the *quoad sacra* ministers had been like the Veto Act, and the sentences passed against the Strathbogie ministers, *ab initio* null and void ; and he moved accordingly ; a view concurred in by Dr Mearns, who seconded his motion. The discussion terminated in the adoption of the Resolution modified to meet these views, and declaring that the chapel and *quoad sacra* acts of 1833-34 and 1839, had been “ incompetently passed,” and were “ of necessity repealed.”

The ecclesiastical censures, to which the presentees to Marnoch, 16. Culsalmond, Lethendy, and Glass, had been sub-
Censures removed. jected, were next brought under the consideration of the Assembly, and unanimously removed ; falling, as a matter of course, under the same principles which had guided the house in dealing with the Strathbogie ministers. The offence, of which one and all of these presentees had been found guilty, and for which they had been punished, was seeking redress from the civil courts against sentences pronounced by the ecclesiastical—applying for the shelter of the *refugium* from the tyranny of the Church, which our reforming fathers had concurred in lodging with the civil magistrate ; and, consequently, the question now settled really resolved into one, in which every man interested in the cause of

civil and religious liberty had a most intimate concern—namely, whether, under the Protestant constitution of this country, a power so obviously leading to the subversion of this liberty, as that which had been assumed by the Kirk, did, or did not reside in the spiritual courts?—in other words, whether Scotland was to be thoroughly and truly reformed from the errors and corruptions of Popery?

The next case, that came before the Assembly, was that of Mr
 17. David Wilson, minister of Stranraer, who appeared
 Mr Wilson re- at the bar craving that the sentence of deposition,
 stored. which had been pronounced against him by the Assembly 1842, should be repealed. This was unanimously agreed to, on the ground, that this sentence had been illegal, unconstitutional, and inept *ab initio*; the deliverance pronounced, reserving, at the same time, to all parties interested, to proceed in any inquiry competent into Mr Wilson's conduct.

In the case of the minister of Cambusnethan, where a sentence
 18. of deposition from the holy ministry had been pro-
 Cambusnethan nounced by the presbytery of Hamilton, on a libel
 case. charging him with various acts of theft, but where reduction of this sentence had been sought from the Court of Session, and interdict in the mean time granted against its execution, on the ground, that it had been given forth by a court incompetent, as in part composed of *quoad sacra* ministers, the General Assembly, on a petition from the minister, quashed all the proceedings that had taken place, and remitted to the presbytery of Hamilton, as at length legally constituted, to proceed *de novo*, according to the laws of the Church, annulling, *inter alia*, the sentence of deposition, which, on the ground of contumacy, the General Assembly 1842 had pronounced.

The case of Cambusnethan, thus disposed of by the Assembly,
 19. was one of those of which the seceders, who had
 Remarks. left the Church, have made a most unfair and unwarrantable use; and to which they had specially referred in their Declaration and Claim of Right, and subsequently in their Protest. They had represented the deliverance given in it by the Court of Session, as the taking upon itself by that court,

to screen the criminal minister from the justly incurred penalties of his offences; whereas the only question, brought before the civil tribunal, was the legal competency of the body trying him for these alleged offences, to assume or exercise any jurisdiction over him, as a minister of the Established Church of Scotland. The pertinacity, with which the Non-intrusionists adhered all along to this charge against the Court of Session, demonstrated how much they felt the case to be one calculated, at least, *ad captandum vulgus*; but their boldness in gravely laying it before the Queen in Parliament, almost exceeded belief, and clearly showed to what desperate means of maintaining their position they had at length been driven. To accuse, as they did, the highest court of justice in the kingdom, composed of men of the greatest integrity and virtue, of protecting the thief and the swindler, was an outrage on the good sense of the country, felt to be utterly intolerable; and it certainly indicated how much the public mind had been misled and poisoned, when any were found ready to respond to this charge; and so blinded in the cause of Spiritual independence, as not to see that any other course, than that pursued by the Court of Session in the Cambusnethan case, would have been a criminal dereliction of its duty. It may now, however, be noticed in passing, that the reduction of the sentence of deposition sought by the minister, was ultimately refused by the Court of Session, on the ground that, having acquiesced in the sentence when pronounced, he was barred, *speciali exceptione*, from raising an action of reduction; the interdict, formerly granted, was accordingly recalled; and the sentence of deposition by the presbytery, although given out by a court of alleged incompetent jurisdiction, became final.

The case of Cambusnethan deserves still more particular notice,
 20.
 Importance of as an instance, in which the ecclesiastical judica-
 this case. tory, when itself at length purified and rectified,
 proceeded with a consistent and undeviating regard to the supremacy of the civil. It had been found by the Court of Session in the Stewarton case, that the ministers of *quoad sacra* churches had no seats in presbyteries; and that consequently any deliverances, on which they had been allowed to sit and

act as members, if properly challenged, were, *ipso facto*, null and void. The fact, that the minister of Cambusnethan had been deposed by a presbytery in which such incompetent members had sat, even although the sentence had not been protested against at the time, as illegal, by the party most deeply interested, had been admitted, and appeared on the face of the record; and this the General Assembly of 1843 held sufficient to demand from them the decision, that the individual libelled and deposed, had never ceased, according to the law as applicable to his case, to be a minister of the Church of Scotland. The question, whether by his concurrence in the sentence of deposition, he had barred himself, *speciali exceptione*, from insisting in an action of reduction before the civil courts, was one for these courts alone to determine; and when they did find, on entering on the merits, that he was so debarred, and did thus in effect pronounce, that the original sentence of deposition should stand good, the Church did not, on her part, insist on the deliverance to which she had come, that this sentence could not be sustained. Had the theory of spiritual independence, as advocated by the seceding body, found favour with the Church, as now constituted, a new schism must have arisen out of this source. Much, indeed, has been attempted to be made of the fact, that up to this day (1849) the deposed minister of Cambusnethan still remains within the Church; and her imbecility in dealing with her unworthy sons, in consequence of the civil thralldom under which she is placed, has been not a little exulted over. By all, however, who regard this case in connexion with alike the rights and immunities enjoyed under the civil law, and the requirements of the discipline of the ecclesiastical, will consider it as very valuable, in illustrating how strongly the one is fortified against spiritual tyranny and oppression—how properly and considerately the other is provided for, and upheld, as an instrument for maintaining all that is sound in doctrine and upright in morals, within the Church of Scotland. Where irregularities have taken place, such as had been fallen into by the Church courts in this particular case; and where these had been further defended and persisted in, by a perverse and illegal resistance and open contempt of the authority of

the civil, it was to be expected that the processes in both might become so complicated, as to require time for their unravelling. But to hold up such delay, created by the seceders themselves, when within the Church, as evidence of her utter prostration to the civil power in matters of discipline, is a charge as ungenerous as unjust; and bespeaks, in truth, the soreness felt by the Free Church leaders, that the case on which they carried on so much of their agitation-trade, when in the Establishment, should have proved of so little value.

The result of the proceedings of this memorable Assembly of 1843, may well entitle the era, at which they occurred, to be termed the Third Reformation of the Church of Scotland; and history will point to names, otherwise humble and unknown, as those of the honoured and distinguished instruments, under Providence, of bringing about the last and most thorough emancipation from spiritual tyranny and thralldom, which the Church of Scotland has yet undergone; and placing the government and discipline of this Church in that relation to the civil magistrate, in which the place of the State and its tribunals, in matters ecclesiastical, as in matters civil, is clearly and distinctly acknowledged. Questions that had long agitated and distracted the Church of Scotland, were thus at length set at rest, and her peace henceforth secured against controversies within her own bosom, on the "limits of civil and ecclesiastical authority,"—"the power of the keys,"—and the nature and rights of that "government," which is "distinct from the civil magistrate." The remnant of Papal usurpation and tyranny, which the Reformation and the Revolution had failed to extirpate, will henceforward be sought in vain within the National Church of Scotland; and her usefulness, as the great religious institute of the country, will be the more effectually secured, that she is placed beyond the arena of such idle and unprofitable "disputations."

The Protest, which those who had seceded from the meeting on the 18th May had left behind them, was taken into consideration by the Assembly on the 24th. The circumstances, under which this document made its appearance,

21.
Third Reformation.
22.
Protest of the
Seceders.

might have well justified the Church in passing it over, without any notice whatever; and perhaps the strictly formal mode of its disposal would have been, to have sent it after the Separatists, with a message that, on taking their leave of the hall, they had forgotten a paper, which they might choose to possess. It was treated, however, with more respect by Dr Cook, who stated his opinion that it should be met by an examination of the minutest kind; that a formal answer to it should be drawn up and widely circulated; and a committee appointed for carrying out this purpose. In the mean time, the house took up the question touching the duty of the Assembly, as regarded those who had signed this Protest. No difficulty presented itself in the way of dealing with this question. The Protest plainly implied a purpose of separation, while, no doubt, its terms might be held to indicate, that no inseparable bar to a return had as yet been set up. A distinction was to be drawn between those, who had signed the Protest and who had been sent up as members of the Assembly, and those who might afterwards adhere to it. With the former, the Assembly would find itself able to deal at once, should they follow out what the Protest imported: with the latter class of separatists, a more round-about course must necessarily be pursued. Under these views of the Assembly's position, Dr Cook moved, "that the ministers who had attached their names to the Protest, had ceased, by their own act, to be ministers of the Church of Scotland; that their churches had become vacant; and that they had rendered themselves disqualified for receiving any presentation to a parochial or other spiritual charge in the Church, as established by law; and that the subscribing elders had ceased to be elders in any of the parishes or sessions connected with the Establishment." In regard to those ministers and elders, who might afterwards adhere to this Protest, instruction was given to the several presbyteries, to which they belonged, to declare them in the same predicament as those who had signed the Protest, if they failed to appear to answer to the charge, or declared their adherence to any deed of separation.

From the fact, that the committee, appointed by the Assembly

23.
Exultations of
the Seceders.

to answer this Protest, were not prepared to bring up a report before its rising, and that the matter

came to be overlooked in the Commission of August, to which it had been remitted, the seceders took occasion to exult not a little, that the arguments which it embodied were found too difficult to be easily disposed of; and they boasted of their Protest, as "the Unanswered and the Unanswerable." Not a little art and cunning had been displayed in the drawing up of this document; and, looking to a section of churchmen within the Establishment, who, although they had gone far with the Non-intrusionists, had not seen it expedient to join them in their ultimate secession, it was no doubt felt by the schismatics, that any attempt to reply to the Protest must keep alive the seeds of dissension within the Church. This was an evil, which was found likely to occur in the small committee itself, that had been appointed to prepare an answer; and it was evident, that it would still more distinctly present itself, should any answer be taken up by the Assembly. Had not the firebrand, which had been so cunningly thrown into the Church, been treated as it was, the great object, which Lord Aberdeen soon afterwards declared that government had in view in bringing in the Scotch Benefices Bill—namely, that of retaining the "middle party" in the Establishment—might have been defeated; and it was certainly the less necessary to answer the Protest, that it presented nothing new, and that all its reasoning and arguments had been replied to, and refuted again and again by the parties, now constituting the great majority in the Assembly. Nor will it be denied that, in ultimately permitting this boasted Protest to pass unreplied to, the Church of Scotland adopted at once the most dignified and proper course; while, at the same time, she escaped the snare so cunningly laid for her, and into which, it must be admitted, the Assembly was at first very nearly falling.

While the Assembly was engaged in disposing of the Protest
 24. and the protesters, there was laid upon their table a
 Deed of Demission. "Deed of Demission and Separation" from the
 Established Church, signed by the whole body of ministers and
 elders, who had met in the Canonmills buildings, and constituted
 themselves into a General Assembly of "The Free Church of
 Scotland," under the moderatorship of Dr Chalmers. This deed,
 after solemn prayer and grave consideration, had been duly and

formally executed ; and being signed, as well by those who had not joined the protest as by those who had, it consummated the act of Secession and Separation.

By the Secession, which had now occurred to so great an extent
^{25.}
 Committees of sup- over Scotland, a large number of parishes were
 ply appointed. suddenly thrown vacant ; and the Assembly pro-
 ceeded to take the most active measures, to insure to these parishes
 the administration of religious ordinances. A committee was
 appointed with this view, of which the Rev. Dr Thomas Clark, of
 St Andrew's Church, Edinburgh, was constituted the convener.
 The ordinary rules of admission of students of divinity to trials,
 for license to preach the gospel, were to a certain extent relaxed ;
 and every facility, consistent with the government and discipline of
 the Church as established by law, was adopted to obtain the ser-
 vices of ministers of Dissenting bodies, willing to join the Establish-
 ment. The committee, on the rising of the Assembly, entered on
 active operations, and succeeded in accomplishing the great object
 which they had in view, to an extent that inspired every friend of
 the National Church with the confidence, that she still retained her
 place in the esteem and affection of the people of Scotland. In
 many parts of the country the shock of the Secession was little
 felt ; and it was only in the Highlands of Sutherland and Ross-
 shire, where the committee had to encounter a want of preachers
 versant in the Gaelic language, which they could not possibly
 supply, that the seceders were left in anything like possession of
 the field.

The Free Church, as it is called, differs from every other
^{26.}
 Position of the Secession that has taken place from the Church of
 seceding body. Scotland, that it has come forth at once a full-grown
 religious body, commanding great pecuniary resources derived
 from the single source of voluntary donations ; and has, perhaps,
 even already achieved the greatest magnitude which it is destined
 to reach. The success of this sect, in attaining so prominent a
 place among others that have gone before it, is doubtless to be
 ascribed, in a great measure, to the advantages enjoyed by its
 leaders, while within the pale of the National Church ; and the

unscrupulous use which they made of their position in preparing for, and in fact to a great extent maturing, the schismatic movement, while yet eating the bread of the Establishment. By holding out the prospect, as they did, that a vigorous stand in defence of their principles would obviate the necessity of a separation, and secure a victory to these principles, they succeeded in persuading numbers of the laity to pledge themselves at once, to stand by them in the struggle, and, if vanquished, to accompany them in their secession;—which secession these laymen were taught at the same time to regard as a very remote contingency, provided they displayed a bold and uncompromising determination to adhere to the Spiritual Independence of the Church. In the struggle with the State, which had just terminated, the Covenanters of the nineteenth century had been defeated; but, at an early period of the combat, and availing themselves of the place and privilege of an established clergy, they had thus succeeded in enlisting many laymen, whose feelings of honour and of pride—if not of matured conviction—were strong; and upon whom the clerical leaders were able to turn round at the falling of the curtain, and to remind them how much they had encouraged the movement, and were therefore bound to stand by those who were now ready to sacrifice their endowments in testimony of their sincerity. It was forgotten—or a feeling of pride forbade the recrimination—how much the clergy had laboured to seduce the laity from their allegiance to the Established Church, of which they formed a part, while matters hung in doubtful suspense. And so far had these lay allies gone with them, in reprobating an Establishment resting on the principles which, it was found at length, that the State would alone recognise, as antisciptural and sinful, that it must be acknowledged, to have remained within the National Church, while these opinions were unchanged and unretracted, would have done more detriment to their own character, than their secession could inflict injury on the Establishment.

The same Establishment *prestige*, which enabled them to prepare

27.
Tactics of the
Free Church.

so formidable a Secession, has hitherto assisted the schismatics in sustaining it. Many who have joined the ranks of the Free Church cannot persuade themselves that

they have descended to those of *Seceders* and *Dissenters* ; and no great disposition has been shown by them to fraternise, on anything like terms of equality, with their new associates ; but, on the contrary, these associates are still regarded with something of the feelings entertained towards them, when the line of separation was more marked and distinct than it now is. Hence has it happened, that even already the Free Church has felt herself compelled to take up a more insulated position than any other religious community in the country. She cannot, on principle, receive the advances of the Established Church, even when made to her, as a body holding orthodox doctrines, and sound in the faith ; and it must be admitted, that her charity and good-will towards the stock from which she has separated, is singularly slender. She will not, from pride, take that humbler place among her new allies, which, as the latest body that has joined them, she is bound to occupy ; and she feels, in consequence, that nothing but the most gigantic efforts, and unweariedly keeping in view of the public her sacrifices and her labours, can preserve to her the distinguished prominence, as a religious body, which at this moment she certainly occupies. In these circumstances lies much of the secret of that extraordinary success, which has attended the schismatic movement ; and, while such instruments are within the power of the Free Church, this success may perhaps remain unimpaired. To perpetuate its influence, however, no other course presents itself, than a system of education under her own control, by which the son shall be instructed to regard himself as bound by the creed of the father ; and to such a system the Free General Assembly has lost no time in applying its attention. The necessity under which the Established Church was laid, by the laws equally of the State and the Church, to take care that the teachers of parochial schools should not desert the National Establishment, and at the same time enjoy the *status* and emoluments connected with it, afforded a pretext which was cunningly seized on by the seceders, that, in organising an educational system of their own, they are merely acting on the defensive ; and they have thus so far found themselves in advance of all the seceding bodies that had gone before them—none of whom, while they separated from the ecclesiastical,

have felt called upon, until lately at least, to repudiate the educational system of Scotland, so far as to appear in open and avowed opposition to it. The very circumstance, however, of so vast a body as "the Free Church" arising at once out of the controversies of 1833-43, pointed out the necessity of providing abutments against the dangers to which the fabric was exposed, from the very bulk and unwieldiness which it had so suddenly attained; and it was evident that, indebted for its existence and its immediate support to a generation that would soon pass away, the prejudices and feelings of a coming race must be enlisted in the cause. Thus, while affecting to be more nearly allied to the National Church of Scotland than any other sect that has separated from it, the Free Church is every day making wider and wider the breach between them; and everything portends that, within a very short period, this Church, in every respect, will be more opposed, if not more truly inimical, to the Establishment, than any of the seceding bodies in Scotland. The existence, indeed, of a body so powerful in numbers, so ardent in zeal, and so wealthy in pecuniary resources, as the Free Church—and holding so openly the doctrine, that there are "two kings in Scotland;"—that Christ has a kingdom, which he rules by visible office-bearers, distinct from the civil magistrate, whose edicts its subjects are bound to obey, however much opposed they may be to secular decrees—cannot be regarded with indifference by the State. Nor is it to be overlooked, that the elements of this religious tempest appear to be gathering on the southern side of the Borders, where the principles, on which the Protestant Reformation of England proceeded, appear in no little danger of being subverted; and spiritual claims, not easily distinguishable from those which this Reformation overthrew, are again threatening to become dominant. We have only, however, to peruse the annals of the past with attention, to be satisfied that, if a spiritual polity, and its *independent* office-bearers, is again to threaten public peace and order with destruction, and must once more be put down, the reign of terror and persecution—as it will be called—must be submitted to. If this doctrine, on the other hand, is to ride triumphant over its secular opponent, a spiritual

tyranny and domination, as grinding and oppressive as in the darkest ages of Christendom, must be established. If, however, the spiritual sceptre is again to be wielded over the world, some there are who would place it in the hands of a Pope rather than a Presbytery—in the custody of the Church of Rome, rather than the Free Church of Scotland.

The seceders from the Church of Scotland have demanded, and
 28. they have succeeded in obtaining, not a little credit
 Alleged sacrifices. for the sacrifices made by them at this time to the principles, which they conscientiously entertained, and had long so zealously advocated, as accordant at once with scripture rule and constitutional enactment, while they were within the Establishment. However meritorious their conduct in this respect, they cannot at least lay claim to any disinterested heroism in their order, of which its history does not furnish equal and brighter examples. The Non-conforming clergy in the days of Elizabeth—the Presbyterian ministers of the period between the Restoration in 1661 and the Revolution in 1688—the “Nonjurants” of a later period of the Church’s history—and the still more remarkable and illustrious conduct of the clergy of France, when, in 1790, they refused the oath to the constitution as then adopted by the National Assembly—had each of them demonstrated how much of worldly interests, and selfish considerations, a body of Christian pastors might be ready to immolate on the altar of duty. If the merits of the sacrifice are to be measured by the severity of the persecutions to which they were severally exposed, or the amount or rigour of the concessions demanded from them by the State, the seceders in 1843 may indeed carry off the palm of victory, as having surrendered their civil status and emoluments to the very slightest attack upon the independence of the Church, which is to be found in all her history. The point to which they had brought their negotiations with government—particularly through Sir George Sinclair—is evidence under their own hands, that there was then, after all, but a “hair’s-breadth” of difference between the Church and the State, on the matter on which so many afterwards saw fit to become separatists.

Time must tell how far all these gigantic exertions are to prove

effectual in sustaining a fabric which, as it was reared with
 29.
 Extent of the
 Secession. almost miraculous rapidity, it may be expected will
 fall with equal celerity. After the lapse of three years
 from the secession, the Free Church could boast of eight hundred
 and sixteen congregations, six hundred and sixty-two ministers,
 two hundred thousand communicants, six hundred churches, and
 one hundred and seventy-one manse. The pecuniary resources
 to sustain this machinery in full efficiency had amounted, during
 these three years, to one million one hundred and forty thousand
 pounds sterling, of which there only remained one hundred and
 fifty thousand pounds unpaid up!

Although the Protesters at the meeting of the 18th May had not
 30.
 Proceedings in
 Free Assembly. awaited the constituting of the Assembly, and had
 not therefore come into any official knowledge of
 the Letter addressed by the Queen to the Church of Scotland, they
 did not, when forming themselves into a "Free Church," pro-
 ceed to the ultimate step of demission and separation from the
 Establishment, until they had at least noticed and commented on
 this important document;—a document, which they set out with
 admitting would be memorable in the history of Scotland, and in
 the history of the Christian world. It was indeed noticed, as
 somewhat remarkable, that the attention of the Free Assembly was
 first directed to this letter by the Rev. Dr Cooke of Belfast, who,
 although not a member of the deputation from the Presbyterian
 Church of Ireland, had been called on to address the Assembly,
 when that deputation gave in the commission, which they had
 received to appear as its representatives at the General Assembly
 of the Church of Scotland. The Presbyterian Church of Ireland
 had all along accompanied the Non-intrusionists of the Kirk, in
 their claims to the spiritual independence, which they had at length
 achieved, and had heartily cheered them on in their course of
 opposition to the civil tribunals; and hence their representa-
 tives felt themselves bound in honour, and equally at liberty, to
 regard the section which had seceded from the National Church as
 the body to whom they were delegated. Their desertion of the
 Established Assembly was a circumstance, which that body had
 more reason to hail with satisfaction than to regard with regret.

It had been the practice of the deputations from both the Presbyterian Churches of England and Ireland, who appeared by deputations in the General Assembly, to forget that the position in which they stood, was one of courtesy and permission, and to play the part of partisans, where they had no voice in the decisions come to ; not only supporting the Non-intrusion party, but charging their opponents with trampling on the "crown-rights of the Redeemer," dethroning the Head of the Church, and casting Him out of his own house. Doubtless, therefore, the Established made the Free Church very welcome to Dr Cooke of Belfast and his friends. Such remarks as the reverend doctor made on the Queen's letter, when addressing the Free body of ecclesiastics, would not have been listened to within the National Assembly, as now constituted and reformed, from any one situated as was Dr Cooke ; but they found a very proper place, and welcome reception, where they were now delivered. In these remarks Dr Cooke afforded—perhaps unwittingly—a very strong proof of the deceptions which had been practised on many, when he stated that he had been led to believe, on what he thought good authority, that the Queen's letter would have contained a distinct recognition of the right of the Christian people to reject an *unacceptable* minister. That such a hope had been entertained by many others may be inferred from the observation of Dr P. Macfarlane, in announcing that a committee would be appointed to prepare a Deed of Separation, that, "after reading the Queen's letter, none could entertain any doubt as to the course they ought now to pursue;" as from this it may be fairly presumed, that if the letter had recognised the right of the Christian people to reject an unacceptable minister, the seceders would, notwithstanding their protest, have returned to the Establishment. In all this, therefore, was evidently involved an admission that, in taking the protest, and so far becoming separatists, the seceders had proceeded in the dark. The task of commenting on the Queen's letter, and making known the opinion entertained of it by the "Free Assembly," devolved on the Rev. Dr R. Buchanan of Glasgow, one of the most talented and distinguished of the seceding clergy ; and he brought it under the notice of that body with as much preliminary respect, as if it had been formally on their

table—had been addressed to themselves as a public body, and demanded from them an official response. He disclaimed, as a matter of course, all disrespect towards her Majesty personally, in delivering his sentiments freely on the document, for which he held her advisers to be alone responsible; and he claimed the greater license to treat it with all manner of freedom, that the members and elders whom he addressed, had manifested their deference for the constituted authorities of the country by the sacrifices which they had just made. He admitted at once the competency of the Crown to have addressed such a letter of counsel to the Church; but he certainly went out of his way, in accompanying the admission with the somewhat sneering remark, that while the Crown was so liberal in dealing out its advice to the Church of Scotland, this advice was at the same moment withheld from the Church of England. The occasion seemed to Dr Buchanan a fair and legitimate opportunity to hint at the Puseyite heresies, that had sprung up in the Episcopal Church of that kingdom, and he availed himself of it. But it also furnished him with the occasion to notice the state of the Church of Scotland eighty years ago, when, according to him, its relaxed discipline, and the flagrantly immoral conduct and heretical teaching of its office-bearers, called loudly for counsel from the Crown, and none was given; and to contrast the apathy of the State at that time with its forwardness to advise the same Church at a period like the present, when, according to him, she was in the course of effecting a happy and glorious reformation. He did not, therefore, give credit to the Crown for this counsel being tendered with any kind or Christian view, or to encourage the Church to uphold the cause of Christian philanthropy. He believed it came to tell her faithful ministers, that they were the objects of the State's displeasure, and that, if they did not change their system of administering the affairs of the Church, they would forfeit its support. The letter, he said, warned them against the dangers of schism, and spoke of the importance of unity—a language which he thought came with a very bad grace from her Majesty's Secretary of State, when within the Church, of which her Majesty was the head, the standards of her faith were being trampled under foot. He believed that the

separation which was now taking place from the Established Church of Scotland was a separation that would preserve, not break, "the unity of the Spirit of God"—which "unity," and not "unity in the Church," constituted the true "bond of peace." He and his friends around him did not, he said, separate from the Word of God; they did not separate from the Confession of Faith; they did not separate from the standards of the Kirk of Scotland's policy. They separated from the civil power, because they could no longer conscientiously maintain connexion with it. The letter of the Queen spoke of the "rights and property" of the Church of Scotland as conferred on her by the State, and he readily admitted that the "property" of the Church was at the disposal of the State as its donor; he also allowed that there were "rights" which the Church held from the civil magistrate, and he instanced the right of having her decrees enforced by the civil authority. But the "rights" alluded to in the letter were, he contended, manifestly of another character; and after the long and painful discussions which had occurred, and the numerous petitions and memorials that had been carried to the throne itself, no doubt, he said, could remain as to this character. The "rights" alleged to have been conferred by the State upon the Church just amounted, he said, to this—that the Church is wholly dependent on the civil power, having no privilege or power for which she is not indebted to, and which she does not hold at the pleasure of the civil magistrate. He allowed, indeed, that, besides the right of objecting to a minister on the ground of life, literature, and doctrine, which all the law lords agreed that the Christian people of the Church of Scotland possessed, the letter of the Queen might indicate the extension of this right to the *suitableness* of the presentee. But if the people were to be confined to making objections, and the presbytery to consider these objections alone, the civil courts being the judges of their competency, and the Church under such conditions only to have exclusive jurisdiction, then he argued that this exclusive jurisdiction was just the exclusive jurisdiction of a board of county magistrates, confined to the length and breadth of the little territory within which they were permitted to move. In regard to the erection of *quoad sacra* churches to meet the

growing religious wants of the country, the letter, he said, clearly indicated that the power of the Church in the matter was a question which the legislature might possibly take into consideration; and, consequently, the want of such a power must, in the mean time, be admitted by what he called “a prostrate and degraded Church.”

The views taken by Dr Buchanan of the letter of the Queen, to the General Assembly of the Church of Scotland, may be regarded as those, entertained by the ministers and elders, whom at this time he addressed, although no precise vote or resolution, pledging them to this effect, found its way into the record. Nor was this view very greatly exaggerated or distorted, although the spirit in which it was given might not be regarded as altogether praiseworthy. Great allowances, however, must be made for any exasperation of feeling displayed at such a crisis; while the opinions submitted to, and so far sanctioned by the Seceders, were very valuable, as establishing the fact that, had they remained within the Establishment, until the Letter of her Majesty had been read, they must have responded to it in a manner that could only have fed the flame of dissension, which had already raged for so long a period: and persisting in the course of opposition to the civil courts, which the Queen had counselled them to relinquish, could have only accelerated those decided steps on the part of the Crown which, it was evident, had at length been determined on—either a dissolution of the Assembly, and the refusal to call or sanction another, until the Church had obeyed the law, repealed the Veto, and restored the Strathbogie ministers—or the recognition of the minority in the Assembly, who were willing to take these steps, as the Church Established by law. The manner in which the Queen’s letter was regarded by the Seceders went far, therefore, to negative the assertion, afterwards hazarded, that, had they remained on the 18th to hear it read, they would not—many of them at least—have separated from the Establishment. Hesitating to make the voluntary dereliction of their *status*, which they did, as that of the Clergy known to and recognised by the law, they might have still been doomed to see themselves stripped of it by force.

31.
Remarks.

In following Dr Buchanan in his comments on the Queen's letter,
 32. the Rev. Dr Gordon threw a still farther light on
 Dr Gordon. the principles on which the Seceders had proceeded.
 The great doctrine which, as office-bearers in the house of Christ, they had felt themselves called upon to maintain, was, that Christ is the Head, and the only Head of the Church. This doctrine they held to have been repudiated by the civil courts in the decisions at which they had arrived in the well-known cases that had come before them; and the Church had been called on to obey these decisions, and, consequently, so far to be participators in this denial of the Headship. This obedience the Church had refused, in the first instance, to yield, not conceding that the civil courts had the right constitutionally to demand it. But admitting, that with the State itself rested the right to exact obedience, or to withhold the emoluments enjoyed, the Church had applied to the State, and the State had affirmed the views of the law at which the civil tribunals had arrived. This result, he said, as a matter of necessity, decided the conduct to be pursued by men of honesty and principle. To have remained within the Establishment, sheltered by a mere protest against the deed, when at any time perpetrated by the civil power, could only have been regarded as conduct the most hypocritical, when placed in contrast with that acquiescence in this deed, which was plainly implied in holding the *status* and drawing the stipends of the national clergy. To leave the Establishment, as had now been done, was therefore, he maintained, just to reach the position of free and honest men.

CHAPTER XI.

SCOTCH BENEFICES ACT.

THE Letter from the Throne, in reference to the unhappy
1. dissensions that had occurred in the Church, inti-
Answer to the Queen's letter. mated her Majesty's readiness to concur in any measure for restoring peace which parliament might see fit to adopt—an intimation which, made as it was to the General Assembly, could only mean that this venerable body was expected to give its opinion on the necessity and good policy of such a step. A select committee was accordingly appointed, to draw up an answer to this part of the royal address. It was well known that the Moderate party in the Church, although at one time friendly to parliamentary interference, had strongly opposed any legislation whatever at the particular juncture which affairs had now reached. The courts of law had been permitted, without let or hinderance from parliament, to expiscate the doubtful points that had arisen between the civil and ecclesiastical jurisdictions in Scotland; and whether this had, or had not, been the most expedient course to have pursued, it appeared to many that the necessity of any interference of the legislature had, by this time at least, been so far superseded; while the very agitation of the subject in parliament might tend to revive differences which, it was hoped on all hands, were now set at rest; and any act which could be passed would, in all probability, give rise to new doubts, with which the Church had not hitherto been embarrassed. They were willing to rest their hopes of the permanent peace and prosperity of the Establishment on the admitted fact, that, previous to the passing of the Veto and other incompetent acts of the Church, the most marked and gratifying success had accompanied its ministra-

tions ; and these invalid and incompetent proceedings having been at length declared null and void, they argued that there existed every prospect, that to her former course of usefulness and tranquillity the Church of Scotland would return, and would steadily persevere in following it out. It was therefore to be expected that the Assembly, now almost entirely composed of the Moderate party, would respond to this intimation from the throne, that, while they respectfully and dutifully appreciated her Majesty's regard and interest in the welfare of the Church of Scotland, they trusted that the interposition of the legislature would not be required to restore her peace and efficiency. It was also to be presumed—and the whole tenor of the Queen's letter justified the presumption—that, had the Secession, which actually took place before that letter was presented to the Assembly, been anticipated, the legislation referred to would not have been mentioned. But, as events soon afterwards proved, a bill for settling matters in the Church was at this time in actual preparation, or rather, more correctly speaking, the old bill of Lord Aberdeen, with modifications, (approaching somewhat more nearly to those which had formed the subject of so many and protracted negotiations with the party that had now seceded from the Church,) was about being revived. To many of these modifications the Moderate party had opposed themselves even more strongly than had the old Non-intrusionists ; and a measure, embodying them in any shape, could only come, at the existing stage of events, from a small section of churchmen, who, although many of them had gone far with the seceding brethren in support of Non-intrusion and Spiritual Independence, and had joined in the Claim of Rights, had not felt themselves called upon to make the same sacrifices in their support. It appeared, therefore, that the Moderate party, although in communication with her Majesty's government, until within a little of the meeting of Assembly, had not enjoyed its confidence to the extent they had been led to believe ; for, so far from anticipating such a measure as was now in contemplation, they had been given to understand, that no bill whatever would be brought into parliament ; and when it was rumoured over the Assembly, that a measure was actually within a few hours to be introduced into the House of Lords, the

leading churchmen would not credit the report. It was, therefore, of obvious importance towards gaining the object in view—the concurrence of the Assembly to the measure now in contemplation—that, in framing the committee to answer this part of the Queen's letter, a preponderance should be given to the views entertained by what was still known as the “middle party” in the Church; and, accordingly, members who were understood to entertain very marked objections to any legislation whatever, were excluded—the mover distinctly avowing, that he had not placed in his committee the name of one of the most talented and distinguished men in the Assembly—just because the learned Professor was what his lordship pleased to call an “extreme man.” The committee, as at length constituted, entered on the subject remitted to them, when the Moderate members made a stand against inviting any legislation, as matters now stood. They were unable, however, to obtain a report distinctly repudiating such legislation; and the committee ultimately recommended such a response as, without perhaps directly implying that the Church would welcome legislative measures, conveyed an opinion, that it was desirable, on all grounds, that the state of the law, concerning the settlement of ministers, should be fixed with as little delay as possible; and that the Assembly should declare their full confidence in the good intentions of her Majesty's government;—a report, which it was not very easy to reconcile with the ground previously taken up by the Moderate and Constitutional party, that the law had been duly and fully expiscated, and all doubts regarding it removed. On this report being brought up, the Assembly, without discussion, which it was deemed advisable to avoid, adopted the suggestion of the committee,—several members intimating, what indeed seemed unnecessary, that, in expressing confidence in the intentions of her Majesty's government, the Church did not commit herself to an approval of any measure which they might think fit to bring forward, should legislation be determined on, or compromise her right to be consulted in all matters affecting her welfare.

It was felt, on this occasion, by the Moderate party, that they could not well maintain the high ground of no legislation what-

ever, now that the government, in spite of all their remonstrances, had so plainly indicated a desire to bring in a measure for settling the peace of the Church, as the Queen's letter had evinced; and they were naturally averse from placing themselves in direct opposition, on this point, to Lord Aberdeen and his colleagues—in whose confidence, up to this moment, they never doubted that they stood as high as ever; and of the sincerity of whose desire to effect a settlement, every way consistent with the principles which they had all along advocated, they could not entertain a doubt. They had no reason to think that any measure that might be brought forward would not be strictly *declaratory* of the law, as it had been laid down by the civil courts, in the decisions that had been recently pronounced; and they felt assured that no alteration in the filling of vacant benefices would take place, without previously consulting the Church; and everything conspired to banish the apprehension that anything like the *liberum arbitrium*, which they so much deprecated, would find a place.

It now appeared, that her Majesty's ministers had only been waiting the rescinding of the Veto Act, and the reponing of the Strathbogie ministers, to re-introduce Lord Aberdeen's bill of 1840, without any respect to the opinion that might be entertained by the Church as now constituted; for, on the very day on which intelligence reached London, that these steps had been taken by the Assembly, the noble lord gave notice of his intended measure. Had the Moderate party been at this time as well acquainted, as were those whom Lord Aberdeen afterwards designated as "the great body of the clergy," that such a bill as was afterwards brought forward, was actually prepared; and had they been made acquainted with its provisions, the report from Lord Belhaven's committee might have been somewhat different; not a doubt at least can exist, that the Assembly would have declared their disapproval of some of its provisions, by an overwhelming majority. Matters, however, were so managed that the General Assembly had risen before these provisions were made known; and, before matters were ripe for the consideration of the Commission, steps were taken, in the proper quarters, to secure a majority in that reverend body.

It was calculated to excite not a little surprise, that the introduction of a legislative measure, after so many difficulties had been encountered and overcome in the courts of law, should have been persisted in, in opposition to the views entertained by the great majority of the Church, and accordant only with those of a section of churchmen, who had hitherto been little heard of, and many of whom only came forth, in anything like activity, when they found it right to desert the standard of Non-intrusion and Spiritual Independence, as raised by Dr Chalmers and Dr Candlish. But an explanation was soon afterwards furnished by the noble promoter of the bill in the House of Lords, when, upon its second reading, he intimated, that unless his measure was acceded to, a still greater secession, than had occurred in the Scotch Church, would be the inevitable consequence. Very little credit, indeed, was given in Scotland to this threat, so far as the clergy were concerned; but it had its influence with government, desirous as they naturally were to prevent dissent among the people, knowing well that dissent from the Church but too generally leads to democracy in the State. Her Majesty's government, however, although very distinctly warned, did not see fit to regard another contingency, as deserving of any attention—namely, that the very retaining of the ministers, who were now willing, and felt justified, on receiving Lord Aberdeen's bill, to remain in the Establishment, notwithstanding their once solemnly-recorded declarations, that no such limited measure would content them, would only the more certainly drive many of their flocks out of the National Church—men who had been prevailed upon by these very pastors to pledge themselves to secession, if Non-intrusion and Spiritual Independence, as demanded by Dr Chalmers and Dr Gordon, were not obtained; and who were not prepared to depart from these pledges. The same policy, which led to the introduction of this bill, might, it was said, have the effect of determining not a few of the people, who were in a state of suspense between the contending parties, and inclining, on the whole, to adhere to the Church of their fathers, to forsake the ministry of men whom, under a change that would appear so obviously interested, they might no longer be able to respect or

esteem. These dangers were distinctly pointed out to her Majesty's government, in communications from leading members of the Moderate party; but not being regarded as entitled to any attention, or the risk of a still greater secession of ministers being looked upon as the nearer and greater evil of the two, the desertion, so far as the people were concerned, was actually increased by the very attempt to arrest its progress;—an increase which, giving more and more impetus to the movement, carried it forward, with more and more success, to its ultimate result; and has served, beyond all doubt, to sustain the seceders in the position they now hold. Had government wisely desisted at this time from anything like legislation, and allowed the Church just to fall back upon her laws and practice, as they existed before 1834, none of the clergy, now found within the pale of the Establishment, would have joined the secession; and many of the people, who have gone over to what is called the Free Church, would have remained within the pale of the National.

The General Assembly having, in reply to the Queen's letter, so far committed itself to the approval of a legislative interference in the affairs of the Church, if her Majesty's government should regard it as expedient, the inferior judicatories could not with propriety oppose themselves to the bill now introduced, on the ground that all such interference was inexpedient. But, under the reservation that the Assembly was not committed, by this general acquiescence, to any particular measure that might be brought forward, the presbytery of Edinburgh was soon afterwards moved to adopt resolutions inimical to that provision of the bill, which gave to presbyteries the right to regard the circumstances of the parish, and the number and character of the objectors, as elements in the judicial disposal of the objections that might be offered to the presentee; and which, it was alleged, really amounted to the *liberum arbitrium*, against which the Moderate party had so often and so strongly protested.

These resolutions called upon the presbytery to express the obligations under which the noble mover had laid the Church of Scotland, by his unwearied attention to her welfare; and by his truly patriotic exertions, under many

5.
Resolutions moved
in the Presbytery
of Edinburgh.

6.
Import of these re-
solutions.

difficulties and discouragements, to remove the doubts that had arisen on the rights, duties, and privileges of the several parties interested in filling up vacant benefices in Scotland; and to record their opinion that the measure, which his lordship had introduced, did set forth, generally, the principles recognised by the law and constitution of the Church. They did not touch upon the point, whether the introducing of the people as objectors, at the stage of taking the presentee on trials, was not an innovation on that law as hitherto known; but they confined themselves to that part of the bill, which empowered the Church courts, in coming to a judgment on the objections offered, to “have regard to the whole circumstances of the parish,”—“to the spiritual welfare and edification of the congregation,”—and more especially to “the number and character of the objectors,” as opening the door to proceedings of so arbitrary a nature, as to render it as impossible, for parties interested, to claim or to defend their rights, as for the Church courts themselves to decide upon them, or to ascertain with precision the duties devolving on them under this act. They farther called upon the presbytery to record their opinion, that by this door many of the evils and abuses might re-enter, which had recently brought on a crisis so destructive to the peace and unity of the Church; and to express their opinion, that all parties interested in the matter would be better able to act in accordance with the intent and purpose of the bill, if, in all possible cases, the Church courts had for their guidance and direction some fixed and certain rule whereby to measure their judgments. This attempt to obtain an alteration in this part of the bill was defeated within the presbytery by an almost unanimous rejection of the resolutions, and consequently the approval of the provision complained of. The debate was distinguished for a tone, on the part of several who took a share in it, that indicated their fears that the clause to which this resolution pointed, might be perverted, in its practical application, to party purposes; while at the same time they concurred in supporting the bill as it stood. Principal Lee, who spoke on the occasion, represented the bill as establishing a practice altogether new in the history of the Church—that of bringing the presentee before the people, that they may offer

objections, and that in the very first stage of his trials. He contended that nothing could be more clear, than that trials of ordination always preceded any such process, as that of bringing the presentee under the view of the people, for the purpose of having objections offered against him. To this practice the reverend Principal contended that the Church ought to adhere, as it would, in his opinion, be better that the presbytery itself should judge of the fitness of a candidate, not only for the office of the ministry, but for the particular parish, than that the people should be called upon to appear "in the odious character of offering objections." The Church courts ought, he said, to take the responsibility of the presentee's trials on themselves, and not throw it over upon others, who might be prejudiced against him. He objected strongly to the double trial, as he regarded it, first before the presbytery and then before the people; and he showed, that although a presbytery acting under it should dismiss all the objections offered to a presentee, as unsuitable either on account of his gifts in general, or with regard to the particular charge, it was still competent to them to reject him, when he came before them for ordination, without reference to the specific objections previously offered and disposed of against his being taken on trials. Dr Simpson of Kirknewton followed Principal Lee in this debate, and most warmly eulogised the bill, expressing the great delight he had in supporting it; and more especially in giving his vote for the clause particularly objected to by the resolutions, that had been submitted. The countenance, which the bill received in this quarter, was the more remarkable that when the very same measure—as it was held to be by Lord Aberdeen himself, and by others—was before the Assembly 1840, no one was more decided in its condemnation than the minister of Kirknewton. He gave, however, to the bill, as now presented, a latitude of effect, as a Non-intrusion measure, of which on a fair construction it was incapable. When he held it up as warranting rejection, on the simple ground that the people declared that they could not be edified by the presentee, he put a construction on the measure altogether inconsistent with the views of the noble mover himself, who specially excluded mere dissent—to

which such an objection, unaccompanied by reasons, would have amounted. Dr Muir opposed the resolutions as injudicious; and justified the provision of the bill to which they objected, on the ground that objections, when offered to a presentee by parishioners of piety and prayerful habits, were entitled to more consideration than when offered by others of an opposite character. And he maintained, that if the bill should undergo such an amendment, in committee of the House of Lords, as the mover of the resolutions anticipated, it would be the cutting down of the whole measure, and a breach of the pledge solemnly given by government to the Church.

In the Commission of August, where resolutions of a similar
 7.
 Bill in the Com- tendency and object were brought forward, a large
 mission. majority also appeared against their reception. The discussions which, by this time, had taken place in the House of Lords, and also in the House of Commons, on the subject of the Scotch Benefices Bill, and the strenuous opposition which it was there encountering from the law lords of parliament, naturally attracted much of the attention of churchmen in Scotland, to a measure so intimately affecting their interests; and it soon became known that the Commission of the General Assembly, which was to meet in August, would have the bill under its consideration. When it was intimated by Sir James Graham that, until the mind of the Church, through its Commission, should be known, the bill would not be passed, the proceedings of this very reverend body were looked forward to with still greater and greater interest; as such a determination plainly implied, that government was prepared to pay much attention to the opinion of the Commission, whatever it might be. Looking at the preponderating weight which, in consequence of the Secession that had occurred, the Moderate and Constitutional party in the Assembly had obtained, and recollecting the opposition which they had all along offered to everything like a *liberum arbitrium* in the Church courts—and which opposition they had, more than once, carried up to government in formal and official memorials—it was very generally expected that the provision in the bill, on which the discussion in the presbytery of Edinburgh had taken place, and on which alone

any difference of opinion could well exist within the Church, would be disapproved of by an overwhelming majority. Exertions, however, of a very strenuous, if not very constitutional nature, were understood to have been made in various influential quarters, to obtain as cordial and unqualified an approbation of the measure as possible. It was thrown out, that even a recommendation from the Church to re-consider the clause in question, such as had been suggested in the presbytery of Edinburgh, would be giving a triumph to "her Majesty's Opposition" over her Majesty's Ministers; and hints were even hazarded, that if the bill was not at once and entirely approved of, the resignation of office by its noble promoter in the House of Lords was inevitable; and with his lordship's resignation, it was very significantly surmised, that the existence of the Conservative cabinet itself might be endangered! The Commission was more numerously attended than usual; and, by those acquainted with the constitution of these Church courts, as regards the laymen that are found in them, little surprise was felt, that the exertions to obtain a favourable reception to Lord Aberdeen's bill were successful. The provision, however, which had been the subject of so much debate in parliament, and in the Church courts below, was very strenuously and honestly opposed by Dr Cook, at the head of a large and most respectable minority, chiefly composed of clerical members;—a proof that, among the Moderate and Constitutional party, the ministers were more steeled than the elders against the temptations held out by Crown patronage; and a refutation, so far as they were concerned, very conclusive, of the charge brought by Lord Brougham, that the Scotch Benefices Bill originated in the lust of power, by which ecclesiastics in all ages had been distinguished. On the motion of Principal Haldane of St Andrews, the bill was cordially approved of by the Commission—the majority being chiefly made up of those who, in general, voted with the Moderate party, but, in this instance, had deserted their old standard. On this occasion, as in the discussion of the same question in the presbytery of Edinburgh, all parties concurred in eulogising the patriotic services of the Earl of Aberdeen, the mover of the bill in the House of Lords; and in recording

their opinion, that its provisions were in accordance, generally, with the principles of the Church of Scotland, and declaratory of its laws and constitution. Complaints were, indeed, very unequivocally expressed, on one side of the Commission, that when a measure, so nearly touching the interests of the Church, had been introduced into parliament, the Church should not, through her established organs, have been in any manner consulted; and in the course of the debate, it was placed beyond all doubt, and appeared, indeed, to be admitted on all hands, that when the noble mover of the bill in the House of Lords, and the Premier in the House of Commons, ventured to state that legislation had been requested by the Church in the existing state of matters, they had been very greatly misled. Nor, as it also appeared, had Lord Aberdeen and Sir Robert Peel been less led into error, when they referred to certain regulations for the settlement of vacant parishes, which had been brought up from a committee of the General Assembly, as having passed into a law of the Church, and been almost identical with those set forth in the bill, although altogether without concert between the noble mover and the Church. The argument founded by government on this happy coincidence was entirely demolished, when it was admitted that, to the regulations referred to, the Assembly had, in fact, refused its sanction; and had only consented to send them down, as an overture to presbyteries, declining even to pass them into an interim act. It was not, indeed, explained, how a copy of these regulations, when they came up from the committee, and before they were considered by the Assembly, had been forwarded to some one of her Majesty's government, as adopted by the Church; but in this manner, it was universally understood, that Sir Robert Peel and Sir James Graham had been deceived. The allegation which had been ventured on in the presbytery of Edinburgh—that her Majesty's government stood deeply pledged to the Church to permit no alteration in the provision of the bill, which had created a difference of opinion—was now shown to have been altogether without authority, when it was proved, that the Church had been altogether, and up to the day when this provision was laid before parliament, an utter stranger to its existence.

Lord Aberdeen, on the second reading of the bill, had indeed spoken of the measure as supported by "the great body of the clergy in Scotland;" and as opposed only by the "extreme parties" in the Church. But one of "the extreme parties" to whom he alluded had seceded from the Church; and the other "extreme party" constituted, in truth, the great and overwhelming majority of that Church. Whatever may be the merits or demerits of the Scotch Benefices Act, it belongs of right to a middle party, who appear to have been represented to government as speaking the mind of the Church of Scotland. It might, indeed, have been, that Lord Aberdeen, in speaking of the support which he had received, had in view the reception of his bill of 1840, which he regarded as identical with that of 1843, when those, who now constituted the great majority, had come forward, almost to a man, in its approbation; and when not a few of the very originators of the present measure were in opposition to it. The Moderate party had, since 1840, intimated their opinion that the legislation, which at that time might have been found beneficial, had become at least unnecessary, if not highly inexpedient, in 1843; and they found, moreover, a provision in the present bill, which, had it obtained a place in that of 1840, would have called forth the steps which were now proposed, in order that its real tendency and nature might be considered before passing into a law. The debate in the Commission, when it reached the merits of the bill, turned almost entirely on the danger to be apprehended from the provision which entitled presbyteries, in sitting in judgment on specific and personal objections to a presentee, to have regard to "the character and number of the objectors." To Dr Cook, and those who supported him, this provision appeared to open the door to that *liberum arbitrium* of the Church courts, which it was well known the Earl of Aberdeen had strongly repudiated, when it first appeared in the guise of Sir George Sinclair's amendment to his lordship's bill of 1840; and which it had cost the then learned Dean of Faculty no little difficulty in persuading the noble lord, did not, in reality, lurk under the clause. To Dr Cook and his friends, it did appear that this dangerous power might, under the clause as it was still found in the bill, be usurped by the Church; and

should the measure, as introduced, pass into a law, they were anxious that the Church should stand acquitted of having been accessory to any evils that might arise from this source. On the other hand, Principal Haldane, and his supporters, saw no such danger as was apprehended, nor any reason, arising out of these grounds, why the bill, as introduced, should not be cordially approved of by the Commission. In one thing both parties were agreed, and in Dr Cook's motion it was specially embodied, that the bill, if passed into a law, whether with or without the clause on which the discussion had taken place, would be most honestly and cordially carried into effect.

At this meeting of Commission, the Committee of the General Assembly 1843, to whom had been intrusted the drawing up of an answer to the Protest left by the seceding body on the 18th May, were prepared to give in their report, as instructed by that Assembly. The result of the vote upon the Scotch Benefices Bill, as it appeared practically to approve of the *liberum arbitrium* to the Church courts, which the Moderate party had all along so strenuously deprecated, gave token of differences of opinion upon any reply to the Protest that could be submitted, which would inevitably again divide and distract the Church; and induced the body of ministers and elders, who constituted the minority on that vote, to abstain from attending the subsequent diet of the Commission, when, in consequence, no quorum having been formed, the report and reply of the Committee could not be brought up. It had, indeed, been foreseen from the beginning, that, with the sentiments entertained by not a few who still remained within the Establishment, the Protest, when it came to be answered, would only prove a new firebrand within the Church; but it was not until Dr Cook was deserted by many of his own party, that the consequences of taking up this answer were seen, in all their evil bearing, upon the peace of the Church, just recovering from recent divisions.

The third reading of the Scotch Benefices Bill in the House of Commons had been delayed, that the Commission of the General Assembly might have time to give its opinion upon the measure. It is not a little remarkable, that,

8.
Committee on the
Protest.

9.
Bill carried through
Parliament.

before this opinion could have reached parliament, the bill passed through committee, where amendments, if any were to be adopted, must have been brought forward. It is true that, when read a third time in the House, the fact of the Commission of the General Assembly having stamped it with its cordial approbation must have been known; but it was also not a little singular, that this fact was in no manner noticed or built upon; nor was any argument, in support of the consistency of the bill with the law and constitution of the Church of Scotland, drawn from this quarter.

The conduct of her Majesty's Government, in introducing and ^{10.} passing the Scotch Benefices Act, was not certainly distinguished by any marked respect towards the Church of Scotland. They had thrown themselves, by this time, into the hands of a section of that Church, which stood between the great party that had seceded, and the great party that had all along been regarded as upholding a high-handed patronage, and as advocating what had been stigmatised as Erastian principles, in subjecting the ecclesiastical to the civil tribunals. Not a few of the clergy, eminently distinguished for their talents and reputation in the country, had by this time ceased to belong to the Established Church; and the most prominently known as churchmen, who still remained within her, were certainly found in the ranks of the Moderate party; while the section to which her Majesty's Government turned for advice and direction, could boast of but few who had given token that they were equal to the task which they yet took upon themselves—that of guiding the legislature in the circumstances in which the Church of Scotland had come to be placed.

In the House of Lords the Scotch Benefices Bill, in all its stages, ^{11.} was strongly opposed, on the ground that, in giving ^{House of Lords.} to the people and the Church courts of Scotland the extent of power and privilege which it bestowed, it did not declare the law, as it proposed to do, but introduced into this law a most radical and material change; and the same ground of objection to it was taken in the House of Commons, where it was also strongly opposed as an enactory measure, uncalled for and inexpedient. It passed, however, in the face of all this opposition, and

now constitutes the rule by which, in the initiatory stage of taking on trials, the Church is bound to regulate her procedure. This act does not certainly acknowledge or maintain the principle of Non-intrusion, as laid down by those who had left the Church; and it is founded on a principle, as regards the power of the civil magistrate in things ecclesiastical, altogether opposed to the Spiritual Independence, which they so long and zealously contended for. It empowers the people of a parish to object to a presentee being taken on trials by the presbytery within whose bounds lies the living, to which he may have been nominated; but, in doing so, they are precluded by it from bringing forward, at this stage and in this shape, any objections against his life and doctrine—these being matters to be dealt with according to the ordinary discipline and government of the Church, and specially excepted by the act. It seems plain, also, that they cannot under this act object to his literature; for this is the very point on which the presbytery are to enter when they take the presentee on trials: and hence it seems to follow, that no question regarding the doctrinal or literary qualities of the sermons preached before them, under the new statute, can be entertained by the presbytery. If at a future stage they find the presentee *minus sufficiens in literaturâ*, the presbytery will be bound to reject him, whether the parishioners have objected to him or not, on this particular ground; and it were absurd to suppose that the statute had established a double ordeal through which he was to pass. But while the Scotch Benefices Act thus restricts negatively the rights of the people, and the functions of the presbytery when acting under it, it also limits them positively to objections that are strictly personal to the presentee;—a limitation on which, at the time of the passing of the bill, the Lord Chancellor—Lyndhurst—laid particular stress; and hence it appears very obvious, that the only objections which can competently be offered, under the Scotch Benefices Act, must be confined to the physical abilities of the patron's nominee; and its meaning and intent may be put into this language—"Why should the presbytery proceed to take on trials a presentee to this parish, who cannot speak a word of the only language which the people understand; or who has naturally a voice so weak, that it is impossible he can be heard

beyond twenty feet from the pulpit. Let him be found ever so well qualified in literature, life, and doctrine, he is unsuitable to be our minister." In this sense the Scotch Benefices Act is intelligible, and consistent with the law and practice of the Church of Scotland as hitherto known; but whether a special statute was required, to enable a presbytery to give effect to objections on their face so palpable, and, from the nature of the whole transaction, so insurmountable in common sense, may well be questioned. So long, however, as the act is confined within its manifest legal and competent limits, its operation is at once simple and safe; it is only when stretched, as it is thought by many that it has been, beyond these limits, as a court of law must regard them, that it may come again to hazard a collision between the ecclesiastical and civil tribunals of Scotland. The confusion introduced into its discussion, alike in the House of Lords and Commons, and in the Church courts, arose from not distinguishing between the power of the Church judicatories, as they were to be affected by the proposed measure, and as they would still exist, in virtue of the subsisting laws, which this particular statute did not come to modify or repeal. When it was asserted, as it was, even by noble and learned lords, that under this bill the presbytery might reject a presentee "for any reason whatever," the doctrine might be held as very correct, if it was meant that, notwithstanding this bill, presbyteries, when they escaped from its bearing upon a settlement, and came to the question of qualified or not qualified, might find a verdict resting on any reason which may appear to them satisfactory; and rejection founded on this finding could not, perhaps, be brought under the cognisance of the civil courts. But if it was meant that, under the proposed measure, a presbytery might, "for any reason whatever," refuse to take on trials, a manifest error was clearly fallen into; for the bill especially provided affirmatively, that the reasons or objections shall be personal to the presentee; and negatively, that they shall not involve any matter to be dealt with according to the discipline and government of the Church, and shall not merely amount to *dislike* and *dissent*. Where reasons or objections, coming under any of these categories, are offered, the presbytery would be bound, in the face of them, to take the presentee on trials; and a com-

plaint to the civil courts that, on such grounds, they had passed a sentence of rejection, would be entertained. But, having proceeded to trials, notwithstanding such objections, there was nothing at least in the Scotch Benefices Bill to prevent a presbytery finding the presentee unsuitable, on the very ground that such a portion and description of the parishioners objected to receive him, as, in the conscientious opinion of the presbytery, constituted in him a disqualification to the office, to which they were bound to give effect. It might, indeed, be said, that the principle, casting out mere dislike and dissent, as a ground of rejection from being taken on trials, would be applicable, in the case of being found qualified or not after trials. It might be, that the law in both cases might be found to be the same ; it might turn out, that a presentee found to have been refused collation, after trials duly taken, for the reason here supposed, would be held by the civil courts as illegally and incompetently excluded from a statutory right ; and an action of damages might lie against the parties inflicting this injury. But certainly the adjudged case of Auchterarder, out of which the Scotch Benefices Act arose, afforded no distinct rule or precedent for reaching such a conclusion ; and the Act itself is inapplicable to any case except that of a presentee, from whom the right of being taken on trials is withheld.

CHAPTER XII.

CONCLUSION.

WE opened the volume of the "Ten Years" at a time, when all within the Church of Scotland was peace and harmony; when she had reached a place the most honourable, as a preacher of that righteousness which alone exalteth a nation, and when she was putting forth her energies in promoting schemes of Christian benevolence and philanthropy, the most worthy of her name and position as a Church of Christ. We close that volume when, after a period of strife and turbulence as singular as it was unlooked for, this Church is again resuming the place, and again in all peace pursuing the path of duty that lies before her, as the great Religious Institute of the country. The interval, brief as it has been between these eras in her annals, has been marked by events that will long be memorable in her history. It has been distinguished by the revival of doctrines, which it was hoped the Reformation had for ever banished from Protestant and Presbyterian Scotland; and disfigured, it must be confessed, by acts of spiritual tyranny and oppression—by deeds of disobedience and contempt of civil authority, which every one interested in her character and welfare must deeply deplore. It has been our business, in the preceding pages, to trace these doctrines as they again arose—as they were defended, on the one hand, and were repudiated on the other; and as they ripened into the actions in which, within the Establishment and beyond its walls, they succeeded for a time in embodying themselves. If, in the discharge of this self-imposed labour, we have been able to diversify the picture with little variety in the group-

ing, and have again and again presented the same actors, brandishing the same weapons in a warfare furnishing the same never-failing field of controversy, the real narrowness of excursion, to which we have been confined, must be laid at other doors than ours. If we have been met at every turn by Non-intrusion and Spiritual Independence, it must be remembered that it was under these banners, that the body who have abandoned the Establishment entered on, and carried forward, the crusade that has terminated in their secession. That these banners were unfurled in ignorance and rashness, will be acknowledged by all who have candidly and impartially examined into the subject; that they floated over the heads of many who received them sincerely and conscientiously, as divinely-consecrated ensigns, we have not presumed to deny. They have left the Church of their fathers bearing these banners proudly over their heads, and planting them on the ramparts of their new ecclesiastical polity. They are welcome to the freedom and repose which, under their protecting shade, they no doubt hope to enjoy, grievously as they disturbed for a time the tranquillity of the Church, in their boasted exodus from the camp of the Establishment, and fruitful as was the occasion which they furnished to the scoffer and the infidel to exult;—and if, in the hands of an all-disposing Providence, they prove the honoured instruments of promoting pure and undefiled religion over the land, we doubt not that the prayer of the Church which they have left will be, that the good work may prosper with them. A glance at the position in which these stirring events have left the Church of Scotland, whose peace they so long disturbed, and whose usefulness they for a time did not fail to impair, will appropriately terminate our labours.

To the looker-on, who regards the picture, undisturbed by the passions and prejudices that so long played their part in the Scottish ecclesiastical drama of the nineteenth century, and, it is to be feared, have not yet altogether ceased to exert their pernicious influence, the Church of Scotland presents herself at this day in all the lineaments that, in times past, have obtained for her the high respect and admiration of Christendom, as a healthy and well-conditioned branch of the

1.
Present position
of the Church
of Scotland.

Church Catholic. The appeal may be safely made to all who regard the best interests of the country as bound up in the character and efficiency of the Christian priesthood, if they can point to a clergy more able, and more zealously devoted, as a body, to their pastoral and sacred duties, than those who now minister at the national altar of Scotland. For this body may be claimed a Christian feeling, towards those who have deserted their communion, every way becoming the ministers of the Gospel of Peace. This testimony is due to the clergy of the Established Church, and it is doubtless paid to them by the great body of the people of Scotland ; while the same regard to truth, which demands this tribute to their honour, must compel the regret, that this truly Christian demeanour has not in all cases met with a similar return from too many who have left the pale of the Establishment. While the strife was new, and the balance yet hung in doubtful suspense, some warmth and exuberance of temper and feeling were to be expected, and some apology for strong and fervent language might be found in the personal encounters of the combatants—although, as has been seen, under all these palliating circumstances, much was said and written, peradventure, on both sides, which the kindness and charity of the gospel could not fail to disavow. But when, at length, the union, which had so long and so happily existed, but could no longer be conscientiously preserved, was severed by the Secession of 1843, the field was but the more widely and invitingly opened for the exercise of those forbearing virtues that mark the true and genuine disciple of Christ ; and the greater must be the reproach falling upon those who permit this field to be blocked up by the recollections of strifes and contentions now so happily at an end. While we thus speak of the unbecoming feelings with which too many of the seceding body, even yet, regard the brethren with whom they once “took sweet counsel together,” it is our duty to record that, in many quarters, those feelings have given place to a more just and Christian-like appreciation of others, who saw nothing sinful in obeying the laws of the land, as laid down to them by their constituted expounders, and who felt, and believed, that in remaining within the Church of their fathers, under the interpretation given to these laws, they committed no “treason” against

her great Head, and in no way trampled on “the crown-rights of the Redeemer.” It were, indeed, fearful to contemplate the consequences to the peace and good order of society, the dangers to which every source of social and domestic happiness would be exposed, were these, the war-cries of 1843, to be again heard; and were the Scottish population, that once rallied, as one body, around “the burning bush,” to be marshalled under “friends” or “traitors” to Christ. Between us and such a truly alarming line of demarcation—however madly drawn when the strife was high—there stand the piety and the good sense of the people of Scotland; and the friends of the Church of Scotland may surely indulge the hope, that the day is gone by, when such weapons are to be employed in assailing her stability, as but lately furnished out the hostile quiver. Amidst all the dangers and reproaches to which this Church has been exposed, she still stands pre-eminent among the religious and ecclesiastical bodies of Scotland; and when her sun goes down—if, in the all-wise destinations of Providence, such a doom awaits her—the lustre of the lesser orbs will be grievously impaired. They shine, in truth, with more of a borrowed brightness than they are willing to acknowledge; and in seeking—if such is their demand—the downfall of all Religious Establishments, they are more intent on a suicidal act than they can be willing to admit. The disturbing din of clashing jurisdictions, which lately cheered the hopes and animated the exertions of her enemies, is no longer heard within the courts of the Church of Scotland; and, while these courts administer with justice and integrity the laws given to them to guide their proceedings, the danger of recurring collision may be regarded as far distant. The relation in which the Civil stands to the Spiritual Magistrate has again so far ceased to be a *questio vexata*; and there exists that harmony of views—that identity of creed—which secure to the one the willing and ready aid of the other, in carrying out the great objects confided to them—the welfare, temporal and eternal, of “the Church;”—the great Christian commonwealth, of which they are, under God, the appointed governors and guides. This happy union of Church and State, with its accompanying privileges and valuable immunities, relieves the clergy of the Establishment from anxieties, that might otherwise disturb their thoughts,

and, distracting them from the more immediate duties of their office, might mar the efficiency and usefulness of their labours. And hence it happens, that while the pastors of other denominations, not so fortunately situated, are engrossed by the care of providing the worldly means requisite for the sustentation of ordinances—the spiritual superintendence of the flocks committed to their charge, the diffusion of the gospel over heathen lands, the carrying of its truths and consolations into the desolate and deserted places of their country, constitute the important and truly characteristic matters that occupy the courts, and find a place upon the records, of the Established Church. The clergy of this Church have, indeed, had to encounter not a little opprobrium, because they felt it not to be their duty to desert her communion, under the circumstances that have now passed in review before us; but the reproach, heaped so often upon them during the late conflict, that they were mere “stipend-lifters!” may now be spared by many, who then uttered it, until at least less is heard among themselves, than yet greets the ear, of “sustentation-funds” and “deacons’ courts,” to render them more productive, when the “self-sustaining” congregations are threatening an alarming decrease.

But it will doubtless be asked, how it has come to pass, that
 2. pastors so zealous and faithful, as have been those of
 Causes of the the Established Church of Scotland, should have
 Secession. been deserted, in so many instances, by the flocks that once accepted their ministrations with respect and gratitude? The solution of the problem will not affect the honourable position, which history will assign to a body of Christian ministers, who permitted not the spite, that could even term them in derision “the Residuaries,” to diminish their zeal in the service of their Divine Master, or extinguish their charity towards those who could thus despitefully use them. The fact, in many instances, of a diminished attendance within the walls of the Establishment, is not denied; and it must even be a source of regret to all who desire to see “the body of Christ—the Church”—united together in one mind and sentiment, and worshipping in one common temple, that the pews within the parish church should, in many places, present the blank which they display. Such a spectacle, as is here and there to be

found, may be exulted over by the blinded partisan of a rival polity; or it may be painted by a short-sighted pamphleteer, measuring the great body of the Establishment by the puny standard of his own parish, as proving that the Church of Scotland has become *effete*. But the fact remains not the less unimpeachable, that if the Highlands of Scotland can, in too many places, present a scene which, to the pious and sober Christian, must prove a subject of sorrow and regret, the rural districts of the country can yet display many parishes, over which the storms of the Secession have passed comparatively harmless and unheeded; and where the people yet congregate, on the day of holy rest, on that consecrated spot where moulder the remains of their pious fathers and families, before themselves entering the humble and hallowed temple, that so devoutly resounded to the voice of praise and thanksgiving, while the cry of *non-intrusion* and *spiritual independence* was yet unheard within the Church. The Scottish character must, indeed, have undergone a mighty change, if to these haunts of holy recollections her yet pious and religious peasantry do not one day return with all the feelings of the "olden time." It is impossible that the short-lived, and, in many instances, the really pointless conflict, which we have traced from its commencement to its close, or the arguments and reasoning by which it has been justified and extolled, as a contest so truly holy, can have utterly uprooted the attachment of Scotland's peasantry to Scotland's Church. Many who have looked on during the past controversy, and beheld its apparent results, as they are seen amidst the tumult and disorder that have been created, have been led astray by appearances, in forming an estimate of the amount and character of the desertion so loudly boasted of by the Seceders of 1843. The pictures drawn of this desertion have not only been grossly exaggerated, but the fact has been held up as indicating feelings towards the Church of Scotland, on the part of many who have joined its ranks, which they do not in truth entertain. The eyes of the country are opening to the arts by which it has hitherto been attempted to conceal the real nature and character of the phenomenon that has been presented to its view; while the fact can no longer be concealed, that not only has the Secession failed in recruiting its ranks, since it took

the field against the Establishment, but that not a few who enlisted under its banners are again seeking, like the prodigal son, to return to their father's house. The honest avowal is already encountered, by those who candidly inquire into the secret of this religious movement, that many who have left the Church have neither felt nor acknowledged any fundamental departure, on her part, from the doctrinal standards to which her office-bearers had sworn allegiance; and on such high ground of principle they pretend not to place their *exodus*, as, on such a ground, they feel satisfied, they are unable to defend it. But between them and their retiring minister—who himself can, on this ground alone, escape the sin of schism—they tell us, that there had grown up an attachment—fostered and strengthened, be it observed, within the Establishment—which forbade a separation, when such a day of trial, as has arisen in Providence, overtook their honoured and beloved pastor; and when, without the sacrifice of anything which they felt to demand from them an unflinching adherence, they could extend to him their friendly countenance and sympathy. The Church, that retains her flocks by such a tie, may exist for a time by a truly honourable, but cannot look forward to a very permanent tenure. It is already found, that as events occur to bring about those changes of residence, to which a rural population is subject, the tie of affection, that had bound so many to their outgoing minister, ceases to operate; and other less creditable feelings, which had served to keep not a few within the Seceding body, even after they had seen the folly of their departure from the parish church, are already, under the same circumstances, sharing the same fate, as the more honourable motive of attachment to an old and venerated pastor. Thus, when distance intervenes between the proselytes to the new polity, and the scene where first they vowed their allegiance to it, the healthy current of their feelings is found returning to the channel in which they flow, after all, with the greatest freedom.

We should, however, leave our tale but imperfectly told, if we omitted to notice, how very strongly the new ecclesiastical polity, which has sprung out of the “Ten Years’ ” controversy, is even already bearing testimony to the

3.
Inadequacy of the
Voluntary principle.

utter inefficiency of the voluntary principle, and the system built upon it, to supply the religious wants of the country. At this moment, measures are under discussion, within the courts of the Free Church, touching the expediency of withdrawing ministrations from several of the poorer congregations and districts, to which, in the first fervour of zeal, they had been extended. The movement, as first made, might indeed have been regarded as a great Church-Extension step, supplying the deficiencies which it was found the Establishment could not overtake; and, as such, enlarging at once the religious improvement and the Presbyterianism of Scotland. And to those who looked upon it in this light, without regard to the intrinsic value of the points on which the Secession had occurred, it must be mortifying to reflect, that it is precisely among the poor that the failure of the new polity is becoming apparent; while, on the other hand, the supporter of the Establishment may point with well-grounded exultation to his own, as *par excellence* the "Church of the poor." It has doubtless been surmised, that, to supply the distant and destitute places of the land with the ordinances of religion, was less the object of the movement from the beginning, than is assumed under this hypothesis; inasmuch as its leaders are regarded as having shown themselves less anxious to meet the religious wants of such places, than to cluster around the parish church and school—less intent upon supplying the great moral wants and necessities, that had arisen from the inadequacy of the Establishment to overtake its duties, than on proclaiming their own triumph over the body from which they had separated, and detaching its flocks the more effectually from its communion, by throwing out the bait of separation, where most these flocks were found to congregate together. The history of the "Sites Question," which so long occupied public attention, and became the subject of parliamentary investigation, when "the rights of property" would not yield to the claims of Spiritual Independence, undoubtedly presents features that may warrant the portrait as it has been thus drawn; but that question has, like others, ceased to excite the interest or rouse the animosities that once distinguished it. The picture is now indeed so far reversed, that the shutting up of old, not the opening of new

places of worship, appears the object likely to occupy the attention of the last and largest of the seceding bodies in Scotland. The question is doubtless one more especially belonging to the ecclesiastics, who have thrown off their adherence to the Establishment; but it is a subject so far of legitimate remark, that there is as little of wisdom as of foresight—as little of considerate regard as of cautious and well-weighed procedure, in first enticing labourers into the field, and then discovering that, whatever may be the work for them to perform, the means of employing them are not within reach. There is little, indeed, of Christian patriotism displayed, in leading a large portion of the population of the country, to desert the churches to which they and their fathers have been for centuries attached, and then leaving them without the ordinances of religion, except from those in whose hands they have been sedulously taught, that the dispensing of these ordinances and ministrations has become a sacrilegious desecration of holy things. The announcement, almost already made, that the sphere of Free Church exertions must be narrowed, not extended, must indeed prove a subject of regret to all who, regardless of the minor points, as they may esteem them, of government and discipline that have arisen, desire to see the diffusion of the sound and orthodox doctrines of our Confession of Faith, and Catechisms of the Church of Scotland; and, within the new College, destined to rear the future pastors of the recent Secession, the tidings must be heard with any but comfortable feelings, as they betoken an error, in proportioning the supply to the demand, in which the youth aspiring to holy orders within the new polity, have a very near and manifest interest.

But there are those who maintain that, so far is the conflict, which commenced in 1833, from having terminated at the Secession which closed the “Ten Years” of its existence, that it is even now only in its infancy; that, so far from taking down the stakes, that marked her boundaries in 1843, extending, in less than a single year from her birth, over the length and breadth of the land, the Free Church is busily employed in lengthening and strengthening her cords; while the Establishment which she left is doomed to become more and more the

“moral nullity” which the late Dr Chalmers delineated. It has been seen, that the Secession of 1843 is gaining no strength by further desertions from the National Church; but, on the contrary, is giving back some of the trophies which, in the first outbreak, it was able to snatch from the Establishment. From what source, then, is the Free Church receiving or expecting auxiliaries? Were it possible to believe, that those who once opposed the Voluntary forces with so much vigour, talent, and success, but who have since separated from the Establishment, are to stand forth, with all the numbers, wealth, and influence with which, perhaps, this very stand has encircled them, as advocates of a dogma receiving not a little countenance in other quarters—that states and governments have nothing to do with the religious instruction of their subjects, either in church or school—the opening vista of the future would indeed be replete with perils to all the highest and holiest interests of our country, compared to which the past displays but shadowy mischiefs. Happily, however, we are not yet called to look upon such a picture; and, still more fortunately, the prospect is even opening up, that the Voluntary himself will soon throw off his shallow and short-sighted creed, and learn to court, not to despise the State, as the best friend and ally of the Church. On one point all are at this moment happily agreed; and there is one consummation, which all are evidently seeking with an honourable and truly patriotic devotion. It is universally admitted that, so far as the supply of a Secular Education, adequate to protect society from the fearful dangers that now threaten it, in the growth of an ignorant and disorderly population, is concerned, the *Voluntary* principle is utterly powerless; and the aid of State authority and State endowment must be called in, if the country is to be saved from revolution and ruin. A change has come over the shadow of more than one hitherto cherished dream; and the *Voluntary* is at this moment demanding, that parents shall be compelled by act of parliament to send their children to school, that the impending hazards to social order and good government may be averted, and the tide of crime and immorality, now setting in, may, as they expect, be averted, when men are taught to read, write, and cast accounts. He is following up this demand by

requiring that, in addition to the "rates" already raised for national and public purposes, an education rate may be imposed, that national schools may be properly endowed and supported. So far the Establishment principle has become, or is becoming, universally recognised, and hailed as the sheet-anchor of the vessel amidst the storms to which the onward progress of the country, in the arts and sciences of civilised life, has exposed it. It will scarcely be denied by either Voluntary or Free Churchmen, that instruction in the doctrines and precepts, the hopes and fears of religion, must prove, of all branches of education, the best adapted to raise up the truly peaceable, contented, and loyal citizen. When men are taught, in all the sincerity of a humble faith, to cultivate holy aspirations after the things of another and a better world, where the ways of Providence, in all its dealings here below, will be fully made known and vindicated, the road to all that the legislator and the statesman can covet is clearly developed; and the annals of the world, downwards from the Flood, will tell us, that no nation has ever forsaken or despised this road, without paying the penalty of its negligence in the most direful disasters. "FEAR GOD" must ever accompany—must ever go before—"HONOUR THE KING;" and no truth is more indelibly inscribed on the page of past history than this, which the finger of God himself has imprinted on that of Divine revelation—"Them that honour me I will honour, and they that despise me shall be lightly esteemed." Nothing has, happily, occurred, in the past troubles, to shut out the people of Scotland from rightly apprehending these truths and lessons; and they will not fail to see, that if the Voluntary principle is worthless as admitted, where all the selfish passions of human nature come to its aid, still more helpless must it be, where these passions stand in the way of its application and progress; and that still more necessary must be the aid of the State in affording religious instruction, if it would rally around it a faithful, peaceable, and truly loyal body of subjects. They will pause to inquire, what they are to gain by repudiating State assistance, in supplementing Voluntary deficiency, when applied to afford instruction in the lessons of religion; and when they discover, that by this aid alone can they escape from dangers the most frightful, and at

this moment the most imminent, they will not permit the perverted views, into which they have been hurried in a time of artful and ardent agitation, to lead them still further astray. The "clerical agitators" in the recent movement did themselves go out of the National Church, still clinging, as they declared, to the Establishment principle; still teaching, that it is the duty of the Christian state to maintain and endow an institute, for the instruction of its subjects in the truths and precepts of religion. It remains to be seen what place they are to take in the assaults which their Secession from the Established Church has encouraged her Voluntary adversaries to renew. If they renounce the creed which they professed when they went out of the Church of Scotland, they may, indeed, add to the ranks of the Voluntary army; but they will not inspire their new allies with much confidence in them, as auxiliaries, on whom they can depend in the day of need. In the mean time, however, events are more and more warning the Church of Scotland of the danger that may be approaching her from the now strangely-combined camp. The same events are also, indeed, opening the eyes of the people of Scotland to what awaits the highest and holiest interests of the country, when the *Free Churchman* shall unite with the *Voluntary* in demanding, that the State shall relinquish the post which, in this land of Christian light and liberty, it has ever maintained—that of providing for and watching over the religious instruction of its subjects, whether in church or school; and, if they are not already rallying the Christian population around the Church, which assigns to the civil magistrate the "conservation" of the religion of the country, it is perhaps, because the advances of the enemy are as yet too cautious to create alarm. These advances require, however, to be not the less vigilantly regarded; and, if on this battle-field the Church of Scotland is called to combat her old adversaries, joined by their new allies, the same success, that crowned her efforts during the late "conflict," in saving Scotland from a spiritual tyranny and domination the most intolerable, will assuredly accompany her exertions, in rescuing the religion of the country from the imminent dangers to which it may now be exposed.

A P P E N D I X

APPENDIX.

A.

SOLEMN ENGAGEMENT IN DEFENCE OF THE LIBERTIES OF THE CHURCH AND PEOPLE OF SCOTLAND.

WHEREAS it is the bounden duty of those who are intrusted by the Lord Jesus with the ruling of his house, to have a supreme regard in all their actings to the glory of God the Father, the authority of his beloved Son, the only King in Sion, and the spiritual liberty and prosperity of the Church, which he hath purchased with His own blood :

Whereas, also, it is their right and privilege, and is especially incumbent upon them, in trying times, as well for their own mutual encouragement and support, as for the greater assurance of the Church at large, to unite and bind themselves together, by a public profession of their principles, and a solemn pledge of adherence to the same, as in like circumstances our ancestors were wont to do :

And whereas God, in his Providence, has been pleased to bring the Church of Scotland into a position of great difficulty and danger, in which, by acting according to the dictates of conscience and of the word of God, imminent hazard of most serious evils, personal as well as public, is incurred :—

In these circumstances, it being above all things desirable that, in the face of all contrary declarations and representations, our determination to stand by one another, and by our principles, should be publicly avowed, and, by the most solemn sanctions and securities, before God and the country, confirmed and sealed ;—

We, the undersigned MINISTERS and ELDERS, humbling ourselves under the mighty hand of our God, acknowledging His righteousness in all His ways, confessing our iniquities, and the iniquities of our fathers ; mourning over the defections and shortcomings which have most justly provoked His holy displeasure against this Church ; adoring at the same time his long suffering patience and tender mercy, and giving thanks for the undeserved grace and loving-kindness with which He has visited His people and revived

His cause ;—under a deep sense of our own insufficiency, and relying on the countenance and blessing of the great God and our Saviour ;—do deliberately publish and declare our purpose and resolution to maintain in all our actings, and at all hazards to defend those fundamental principles relative to the government of Christ's house, His Church on earth, for which the Church of Scotland is now called to contend—principles which we conscientiously believe to be founded on the word of God, recognised by the standards of that Church, essential to her integrity as a church of Christ, and inherent in her constitution as the Established Church of this land.

The principles now referred to, as they have been repeatedly declared by this Church, are the two following, viz.—I. “That the Lord Jesus, as King and Head of His Church, hath therein appointed a government in the hand of Church officers, distinct from the civil magistrate.” II. “That no minister shall be intruded into any parish contrary to the will of the congregation.”

To these principles we declare our unalterable adherence ; and, applying them to the present position, and the present duty of the Church, we think it right to state still more explicitly what we conceive to be implied in them.

1. We regard the doctrine—“that the Lord Jesus is the only King and Head of His Church, and that he hath therein appointed a government in the hand of Church officers distinct from the civil magistrate,”—this sacred and glorious doctrine we regard as fencing in the Church of God against all encroachments and invasions inconsistent with the free exercise of all the spiritual functions which the Lord Jesus has devolved either upon its rulers or upon its ordinary members. While, therefore, we abhor and renounce the Popish doctrine, that the government appointed by the Lord Jesus in His Church hath jurisdiction over the civil magistrate, in the exercise of his functions, or excludes his jurisdiction in any civil matter, we strenuously assert that it is independent of the civil magistrate, and that it has a jurisdiction of its own in all ecclesiastical matters, with which the civil magistrate may not lawfully interfere, either to prevent or to obstruct its exercise.

2. In particular, we maintain, that all questions relating to the examination and admission of ministers, or to the exercise of discipline, and the infliction or removal of ecclesiastical censures, lie within the province of the Church's spiritual jurisdiction : and all such questions must be decided by the Church officers, in whose hands the government is appointed, according to the mind and will of Christ, revealed in His word, not according to the opinions or decisions of any secular authority whatsoever. We are very far, indeed, from insisting that the judgments of the competent Church officers, in such questions, can of themselves carry civil consequences, or necessarily rule the determination of any civil points that may arise out of them. In regard to these, as in regard to all temporal matters, we fully acknowledge the civil magistrate to be the sole and supreme judge—bound, indeed, to have respect to the word of God and the liberties of Christ's Church, yet always entitled to act independently, on his own convictions of what is right. But, in regard to all spiritual consequences, and especially in regard to the spiritual standing of members of the Church, and their spiritual privileges and obligations, the judgments of the Church officers are the only judgments which can be recognised by us as competent

and authoritative. And if at any time the civil magistrate pronounce judgments by which it is attempted to control or supersede or impede the sentences of the Church officers, in these spiritual matters, and in their spiritual relations and effects, we must feel ourselves compelled to act upon our own conscientious interpretation of the will of Christ—disregarding these judgments as invalid, and protesting against them as oppressive.

3. As the Lord Jesus has appointed a government in His Church in the hand of Church officers, so we believe at the same time that He has invested the ordinary members of His Church with important spiritual privileges, and has called them to exercise, on their own responsibility, important spiritual functions. In particular, we are persuaded that their consent, either formally given, or inferred from the absence of dissent, ought to be regarded by the Church officers as an indispensable condition in forming the pastoral relation; and that the act of a congregation, agreeing either expressly or tacitly, or declining to receive any pastor proposed to them, ought to be free and voluntary, proceeding upon their own conscientious convictions, and not to be set aside by the church officers—the latter, however, always retaining inviolate their constitutional powers of government and superintendence over the people. We hold it, accordingly, to be contrary to the very nature of the pastoral relation, and the end of the pastoral office—altogether inconsistent with the usefulness of the Church, and hostile to the success of the gospel ministry—an act of oppression on the part of whatever authority enforces it, and a cause of grievous and just offence to the people of God—that a minister should be settled in any congregation in opposition to the solemn dissent of the communicants. We deliberately pledge ourselves, therefore, to one another, and to the Church, that we will, by the help of God, continue to defend the people against the intrusion of unacceptable ministers, and that we will consent to no plan for adjusting the present difficulties of the Church, which does not afford the means of effectually securing to the members of every congregation a decisive voice in the forming of the pastoral tie.

4. And, farther, with reference to the question respecting civil establishments of religion, which we believe to be deeply and vitally concerned in the present contentings of the Church, we feel ourselves called upon to bear this testimony:—that, holding sacred the principle of establishments, as sanctioned both by reason and by the word of God—recognising the obligation of civil rulers to support and endow the Church, and the lawfulness and expediency of the Church receiving countenance and assistance from the State—we at the same time hold no less strongly, that the principles which we have laid down regarding the government of Christ's Church, and the standing of his people, cannot be surrendered or compromised for the sake of any temporal advantages, or any secular arrangements whatsoever; that it is both unwise and unrighteous in the civil magistrate to impose upon the Church any condition incompatible with these principles; and that no consideration of policy, and no alleged prospect of increased means of usefulness, can justify the Church in acceding to such a condition. We emphatically protest against the doctrine that, in establishing the Church, the civil magistrate is entitled to impose any restrictions on the authority of her office-bearers or the liberties of her members. On the contrary, we strenuously assert, that it is his sacred duty, as it is his interest, to give positive encouragement and support to the Church in the

exercise of all her spiritual functions—for thus only can God, from whom he receives his power, be fully glorified, or the prosperity and greatness of any people be effectually promoted. We admit, indeed, that, as supreme in all civil matters, the civil magistrate has always command over the temporalities bestowed upon the Church, and has power to withdraw them. But he does so under a serious responsibility. And, at all events, the Church, whilst protesting against the wrong, must be prepared to submit to their being withdrawn, rather than allow him to encroach upon that province which the Lord Jesus has marked out as sacred from his interference.

5. While we consider the Church's course of duty to be plain, if such an emergency as we have supposed should arise, we have hitherto believed, and, notwithstanding the recent adverse decisions of the Civil Courts, we still believe, that the constitution of the Established Church of Scotland, as ratified by the State at the eras of the Revolution and the Union, when, after many long struggles, her liberty was finally achieved, effectually secured that Church against this grievous evil. The only quarter from whence danger to her freedom ever could, since these eras, be reasonably apprehended, is the system of patronage; against which, when it was restored in 1711, the Church strenuously protested, and of which—as we have much satisfaction, especially after recent events, in reflecting—she has never approved. The restoration of that system we hold to have been a breach of the Revolution Settlement and the Treaty of Union, contrary to the faith of nations. Even under it, indeed, we have maintained, and will contend to the uttermost, that the constitution of the Church and Country gives no warrant for the recent encroachments of the civil courts upon the ecclesiastical province; that, in terms of that constitution, the Church has still wholly in her hands the power of examination and admission, and, in the exercise of that power, is free to attach what weight she judges proper to any element whatever that she feels it to be necessary to take into account as affecting the fitness of the presentee, or the expediency of his settlement; and that, unquestionably, in whatever way the Church may deal with the question of admission, the civil courts have no right to interfere, except as to the disposal of the temporalities. But while we have taken this ground, and will continue to maintain it to be lawful, constitutional, and impregnable, even under the restored system of Patronage, we avow our opposition to the system itself, as a root of evil in the Church which ought to be removed,—the cause, in former times, of wide-spread spiritual desolation in the land, as well as of more than one secession of many godly men from the Church,—and the source, in these our own days, of our present difficulties and embarrassments. We look upon the recent decisions of the civil courts as illustrating the real character of that system of Patronage which they attempt so rigidly to enforce;—making it clear, that it does impose a burden upon the Church and people of Scotland greatly more grievous than it was ever before believed to do. We consider it to be impossible for the Church, so long as this matter continues on its present footing, fully to vindicate, or effectually to apply her inherent and fundamental principles; and it is now more than ever our firm persuasion, that the Church ought to be wholly delivered from the interference of any secular or worldly right at all, with her deliberations relative to the settlement of ministers. We declare, therefore, our determination to seek the removal of this yoke, which neither we nor our fathers have been able to bear; believing that it

was imposed in violation of a sacred national engagement, and that its removal will, more effectually than any other measure, clear the way for a satisfactory and permanent adjustment of all the questions and controversies in which we are now involved.

Having thus set forth the principles on which we are united,—being deeply impressed with a sense of their sacredness and magnitude,—having our minds filled with solemn awe as we contemplate the crisis to which God, in his holy Providence, has brought this Church and kingdom,—a crisis of immediate urgency and of momentous issues, in which great principles must be tested, and interests of vast extent may be affected,—and desiring to deliberate and act with a single eye to the Divine glory, and a simple regard to the Divine will—

We, the undersigned MINISTERS and ELDERS, do solemnly, as in a holy covenant with God and with one another, engage to stand by one another, and by the Church which God's own right hand has planted among us,—promising and declaring, that, by the grace and help of Almighty God, we will adhere to the two great principles which we have avowed, and, in all our actings as office-bearers in the Church, will do our utmost, at all hazards, to carry them into effect; and that we will consent to no surrender or compromise of the same, but will faithfully and zealously prosecute our endeavours to obtain a settlement of the present question in entire accordance therewith.

And considering, that, in this struggle in which the Church is engaged, it is most necessary that we should be assured of the concurrence and co-operation of the Christian people, on whose sympathy and prayers we, in the discharge of our functions as rulers, greatly lean, and by whose influence and assistance we can best hope effectually to press upon the governors of this great nation the just claims of the Church—

We do, most earnestly and affectionately, invite our friends and brethern, members of the Church of our fathers, to come to our help, and of the Lord,—to declare their concurrence in the great principles for which we are called to contend, and their determination to do all in their power, in their station, and according to their means and opportunities, to aid us in maintaining and defending these principles; so that they, as well as we, shall consider themselves pledged to uphold the Church in her present struggle, and, in particular, to use the powers and privileges which, as the citizens of a free country, they have received from God, and for the exercise of which they are responsible to Him, for this above all other ends, that the determination of the legislature of this great nation, whenever this subject shall come before them, may be in accordance with those principles which all of us hold to be essential to the purity of the Church and the prosperity of the people.

We in an especial manner invite them to raise a united and solemn protest against the system of Patronage, which, unjust and obnoxious as it was in its first enactment, the decisions of the civil courts are now riveting more firmly than ever on the reclaiming Church of their fathers. The entire removal of that system they have the fullest warrant, as Scotsmen and as Presbyterians, to claim, on the ground of their ancient constitution, and the solemn guarantees by which their national freedom and their religious faith have been secured.

And, finally, recognising the hand of God in our present troubles, depend-

ing wholly on His interposition for a happy issue out of them, and remembering what our fathers have told us,—what work the Lord did in their days and in the times of old, we call upon the Christian people to unite with us in a solemn engagement to bear the case of our beloved Church upon our hearts, in prayer and supplication at the throne of God, beseeching Him to turn the hearts of those who are against us, and to guide us in the right way,—so that, under His overruling Providence, and by the operation of His Almighty Spirit, the cause of truth and righteousness may be advanced, and the work of righteousness may be peace, and the effect of righteousness, quietness, and assurance for ever.

B.

EXCERPT FROM THE CLAIM, DECLARATION, AND PROTEST, ANENT THE ENCROACHMENTS OF THE COURT OF SESSION.

THEREFORE, the General Assembly, while, as above set forth, they fully recognise the absolute jurisdiction of the civil courts in relation to all matters whatsoever of a civil nature, and especially in relation to all the temporalities conferred by the State upon the Church, and the civil consequences attached by law to the decisions, in matters spiritual, of the Church courts—DO, in name and on behalf of this Church, and of the Nation and People of Scotland, and under the sanction of the several statutes, and the Treaty of Union herein-before recited, CLAIM, as of RIGHT, That she shall freely possess and enjoy her liberties, government, discipline, rights, and privileges, according to law, especially for the defence of the spiritual liberties of her people, and that she shall be protected therein from the foresaid unconstitutional and illegal encroachments of the said Court of Session, and her people secured in their Christian and constitutional rights and liberties.

AND they DECLARE, that they cannot, in accordance with the Word of God, the authorised and ratified standards of this Church, and the dictates of their consciences, intrude ministers on reclaiming congregations, or carry on the government of Christ's Church, subject to the coercion attempted by the Court of Session as above set forth; and that, at the risk and hazard of suffering the loss of the secular benefits conferred by the State, and the public advantages of an Establishment, they must, as by God's grace they will, refuse so to do; for, highly as they estimate these, they cannot put them in competition with the inalienable liberties of a Church of Christ, which, alike by their duty and allegiance to their Head and King, and by their ordination vows, they are bound to maintain, 'notwithstanding of whatsoever trouble or persecution may arise.'

AND they PROTEST, that all and whatsoever acts of the Parliament of Great Britain, passed without the consent of this Church and nation, in alteration of, or derogation to the aforesaid government, discipline, right,

and privileges of this Church (which were not allowed to be treated of by the Commissioners for settling the terms of the Union between the two kingdoms, but were secured by antecedent stipulation, provided to be inserted, and inserted in the Treaty of Union, as an unalterable and fundamental condition thereof, and so reserved from the cognisance and power of the federal legislature created by the said Treaty),—as also, all and whatsoever sentences of courts in contravention of the same government, discipline, right, and privileges, are and shall be, in themselves void and null, and of no legal force or effect; and that, while they will accord full submission to all such acts and sentences, in so far—though in so far only—as these may regard civil rights and privileges, whatever may be their opinion of the justice or legality of the same, their said submission shall not be deemed an acquiescence therein, but that it shall be free to the members of this Church, or their successors, at any time hereafter when there shall be a prospect of obtaining justice, to claim the restitution of all such civil rights and privileges, and temporal benefits and endowments, as for the present they may be compelled to yield up, in order to preserve to their office-bearers the free exercise of their spiritual government and discipline, and to their people the liberties, of which respectively it has been attempted, so contrary to law and justice, to deprive them.

AND, FINALLY, the General Assembly call the Christian people of this kingdom, and all the Churches of the Reformation throughout the world, who hold the great doctrine of the sole Headship of the Lord Jesus over his Church, to witness, that it is for their adherence to that doctrine, as set forth in their Confession of Faith, and ratified by the laws of this kingdom, and for the maintenance by them of the jurisdiction of the office-bearers, and the freedom and privileges of the members of the Church from that doctrine flowing, that this Church is subjected to hardship, and that the rights so sacredly pledged and secured to her are put in peril; and they especially invite all the office-bearers and members of this Church, who are willing to suffer for their allegiance to their adorable King and Head, to stand by the Church, and by each other, in defence of the doctrine aforesaid, and of the liberties and privileges, whether of office-bearers or people, which rest upon it; and to unite in supplication to Almighty God, that He would be pleased to turn the hearts of the rulers of this kingdom, to keep unbroken the faith pledged to this Church in former days, by statutes and solemn treaty, and the obligations, come under to God himself, to preserve and maintain the government and discipline of this Church in accordance with His Word; or otherwise, that He would give strength to this Church—office-bearers and people—to endure resignedly the loss of the temporal benefits of an Establishment, and the personal sufferings and sacrifices to which they may be called, and would also inspire them with zeal and energy to promote the advancement of His Son's kingdom, in whatever condition it may be His will to place them; and that, in His own good time, He would restore to them these benefits, the fruits of the struggles and sufferings of their fathers in times past in the same cause; and, thereafter, give them grace to employ them more effectually than hitherto they have done, for the manifestation of His glory.

C.

FIRST SERIES OF RESOLUTIONS ADOPTED BY THE CONVOCATION
OF MINISTERS OF THE CHURCH OF SCOTLAND, WHICH MET IN
NOVEMBER 1842.

I. THAT, according to the recent, and, as it appears to this Convocation, unconstitutional decisions of the supreme civil courts, and the interpretations which these decisions, if allowed or sanctioned by the supreme power in the state, would put upon the civil law—the obligation to receive and admit a qualified presentee, imposed by the law of patronage on the presbyteries of the Church, is a civil obligation, such as may be enforced by the ordinary compulsitors of civil law ; and, in particular, that the rejection of a presentee in respect of the dissent of the congregation, according to the fundamental principle and law of the Church, is not merely an act to which the civil courts may refuse to give civil effect, but is in itself a civil wrong or offence, which may be dealt with accordingly by the civil courts.

II. That other decisions of the civil courts, and, in particular, the decisions of the Lord Ordinary in the case of the deposition of the Strathbogie ministers, imply an assumption of a jurisdiction in the most sacred functions of the worship and government of the Church, especially in the matter of the deposition of ministers—to the effect of reducing the sentences of spiritual courts in the exercise of discipline over ministers and members of the Church.

III. That these claims to jurisdiction in spiritual matters, on the part of the civil courts, are based chiefly, if not altogether, upon the Act of Queen Anne restoring patronage—an act from the first unjustifiable, and recently interpreted in a sense to which the Church cannot conscientiously submit, and to which she cannot consent to accommodate her ecclesiastical procedure.

IV. That as the principle involved in these decisions, and particularly in the recent Auchterarder judgment, is that of the supremacy of the civil courts over those of the Established Church, in the exercise of their spiritual functions ; so the members of the Convocation declare that no measure can in conscience be submitted to by them, which does not effectually protect the Church against the exercise of such jurisdiction by the civil courts in time to come, and, in particular, fully prevent all future encroachments of the nature specified in the preceding resolutions.

V. That, in all their past contentings, the members of this Convocation have been actuated, and they trust, that in all their future proceedings, they will continue to be actuated, by a deep conviction of the value and excellence of the civil and ecclesiastical constitution under which they live ; and, that one of the chief causes of their present anxiety arises out of their impression that the tendency and inevitable result of the recent decisions of the civil courts, especially if these shall be finally sanctioned as the law of the land, must be as entirely subversive of the constitution as it is repugnant to the principles of this Church and the consciences of her office-bearers.

SECOND SERIES OF RESOLUTIONS ADOPTED BY THE CONVOCATION.

I. That, while the Church most solemnly protests against the invasion of her jurisdiction by the civil courts, as contrary to the Word of God, the Confession of Faith, and the constitution of this kingdom ; and while, in particular, she is entitled, in the judgment of the brethren now assembled, to declare, as the General Assembly in the Claim of Rights has declared, that the assumption by the civil courts of authority in matters spiritual, and especially in the ordination, admission, or deposition of ministers, and the other proceedings there set forth, is in violation of the law establishing the Church, which was made unalterable by the Act of Security and the Treaty of Union ; and that whatever is done in the exercise of that assumed authority, ought therefore to be held, as in right or *de jure* it is, null and void, and of no effect : still, whatever the nation in these circumstances might do, it is not the duty of the Church, as a kingdom not of this world, which has not and cannot have any power of the sword, or any secular dominion whatever, to plead her title, thus acquired and secured, to the temporal benefits of her Establishment, in opposition or resistance to the supreme power of the State, except in the way of remonstrance, protest, and serious warning.

II. That as, on the one hand, it is the bounden duty of the Church and of her faithful ministers, to represent to the supreme power of the state the nature of the invasions of the civil courts upon the spiritual province ; so, on the other hand, the refusal on the part of the state of such a remedy as has been declared indispensable to meet the emergency, cannot be otherwise construed than as being a recognition and sanction by the state of the principle which the decisions of the civil courts involve.

III. That the brethren now assembled fully recognise the intrinsic authority and final jurisdiction of the civil magistrate, or the supreme power of the state, in the exercise of all civil functions, and in the discharge of all the duty which she owes toward the Church of Christ. And, in particular, they acknowledge the right of the civil magistrate to fix the terms on which he will establish the Church, as a right which he is to use on his own responsibility, and in the use of which the Church is not entitled to resist him. And hence, accordingly, as the Church, being essentially independent of the civil magistrate in her spiritual province, is not bound, and is not at liberty, to conform her procedure in the government of Christ's House to the orders of the state, or of any courts of the state, against her convictions of duty founded on the Word of God ; so neither is she warranted in prescribing to the civil magistrate, or requiring him to act according to her views, whether in the administration of civil affairs generally, or in what he does towards religion, or about things sacred—as in his giving to the Church, or withholding from her, the civil countenance and support ; nor may the Church resist his determination in these matters, since in both departments of his duty, the civil magistrate is always bound to act according to his own conscience, under the rule of the Word of God, and on his own responsibility to God.

IV. That it is the duty of the faithful ministers of this Church not to continue to receive the endowments or emoluments secured to them by the

civil law, nor to involve themselves in the manifold inconveniences and serious evils of a protracted struggle with the civil power, after it shall appear that the supreme power of the state, by refusing to relieve them from the interference of the civil courts in things spiritual, does thereby substantially and effectually sanction the condition which the civil courts would attach to their holding of these endowments or emoluments, and to which they never can submit or yield obedience, viz., the condition of subjection to civil control in matters spiritual, and of being bound against their consciences to intrude ministers upon reclaiming congregations.

V. That it is the duty of the ministers now assembled, and of all who adhere to their views, to make a solemn representation to her Majesty's government, and to both Houses of Parliament, setting forth the imminent and extreme peril of the Establishment, the inestimable value of the benefits which it confers on the country, and the pain and reluctance with which they are forced to contemplate the possibility of the Church's separation, for conscience sake, from the state—respectfully calling upon the rulers of this nation to maintain the constitution of the kingdom inviolate, and to uphold a pure establishment of religion in the land—and, finally, intimating that, as the endowments of the Church are undoubtedly at the disposal of the supreme power of the state, with whom it rests either to continue to the Church her possession of them, free from any limitation of her spiritual jurisdiction and freedom, or withdraw them altogether; so it must be the duty of the Church, and, consequently, in dependence on the grace of God, it is the determination of the brethren now assembled, if no measure such as they have declared to be indispensable be granted, to tender the resignation of those civil advantages, which they can no longer hold in consistency with the free and full exercise of their spiritual functions, and to cast themselves on such provision as God in His providence may afford; maintaining still uncompromised the principle of a right scriptural connexion between the Church and the State, and solemnly entering their protest against the judgments of which they complain, as in their decided opinion altogether contrary to what has ever hitherto been understood to be the law and constitution of this country.

D.

PROTEST AND ACT OF SEPARATION GIVEN IN BY CERTAIN MINISTERS AND ELDERS, WHO WITHDREW FROM THE ASSEMBLY ON THE 18TH OF MAY 1843.

WE, the undersigned ministers and Elders, chosen as commissioners to the General Assembly of the Church of Scotland, indicted to meet this day, but precluded from holding the said Assembly by reason of the circumstances hereinafter set forth, in consequence of which a free Assembly of the

Church of Scotland, in accordance with the laws and constitution of the said Church, cannot at this time be holden—considering that the legislature, by their rejection of the Claim of Right, adopted by the last General Assembly of the said Church, and their refusal to give redress and protection against the jurisdiction assumed, and the coercion of late repeatedly attempted to be exercised over the courts of the Church, in matters spiritual, by the civil courts, have recognised and fixed the conditions of the Church Establishment as henceforward to subsist in Scotland, to be such as these have been pronounced and declared by the said civil courts in their several recent decisions, in regard to matters spiritual and ecclesiastical, whereby it has been held, *inter alia*,—

1st, That the courts of the Church, by law established, and members thereof, are liable to be coerced by the civil courts in the exercise of their spiritual functions, and, in particular, in the admission to the office of the holy ministry, and the constitution of the pastoral relation, and that they are subject to be compelled to intrude ministers on reclaiming congregations, in opposition to the fundamental principles of the Church, and their views of the word of God, and to the liberties of Christ's people.

2d, That the said civil courts have power to interfere with and interdict the preaching of the gospel and administration of ordinances, as authorised and enjoined by the Church courts of the Establishment.

3d, That the said civil courts have power to suspend spiritual censures pronounced by the Church courts of the Establishment against the Ministers and Probationers of the Church, and to interdict their execution as to spiritual effects, functions, and privileges.

4th, That the said civil courts have power to reduce and set aside the sentences of the Church courts of the Establishment, deposing ministers from the office of the holy ministry, and depriving probationers of their license to preach the gospel, with reference to the spiritual status, functions, and privileges of such ministers and probationers—restoring them to the spiritual office and status of which the Church courts had deprived them.

5th, That the said civil courts have power to determine on the right to sit as members of the supreme and other judicatories of the Church by law established, and to issue interdicts against sitting and voting therein, irrespective of the judgment and determination of the said judicatories.

6th, That the said civil courts have power to supersede the majority of a Church court of the Establishment, in regard to the exercise of its spiritual functions as a Church court, and to authorise the minority to exercise the said functions, in opposition to the court itself, and to the superior judicatories of the Establishment.

7th, That the said civil courts have power to stay processes of discipline pending before the courts of the Church by law established, and to interdict such courts from proceeding therein.

8th, That no pastor of a congregation can be admitted into the Church courts of the Establishment and allowed to rule, as well as to teach, agreeably to the institution of the office by the Head of the Church, nor to sit in any of the judicatories of the Church, inferior or supreme, and that no additional provision can be made for the exercise of spiritual discipline among the members of the Church, though not affecting any patrimonial

interests, and no alteration introduced in the state of pastoral superintendence and spiritual discipline in any parish without the sanction of a civil court ; all which jurisdiction and power on the part of the said civil courts severally above specified, whatever proceeding may have given occasion to its exercise, is, in our opinion, in itself inconsistent with Christian liberty, and with the authority which the Head of the Church hath conferred on the Church alone.

And farther, considering that a General Assembly, composed in accordance with the laws and fundamental principles of the Church, in part of commissioners themselves, admitted without the sanction of the civil court, or chosen by presbyteries, composed in part of members not having that sanction, cannot be constituted as an Assembly of the Establishment without disregarding the law and the legal conditions of the same as now fixed and declared :

And farther, considering that such commissioners as aforesaid, would, as members of an Assembly of the Establishment, be liable to be interdicted from exercising their functions, and to be subjected to civil coercion at the instance of any individual having interest who might apply to the civil courts for that purpose :

And considering further, that civil coercion has already been in divers instances applied for and used, whereby certain commissioners returned to the Assembly this day appointed to have been holden, have been interdicted from claiming their seats, and from sitting and voting therein, and certain presbyteries have been by interdicts directed against their members prevented from freely choosing commissioners to the said Assembly, whereby the freedom of such Assembly, and the liberty of election thereto, has been forcibly obstructed and taken away :

And further, considering that, in these circumstances, a free Assembly of the Church of Scotland, by law established, cannot at this time be holden, and that an Assembly in accordance with the fundamental principles of the Church cannot be constituted in connexion with the State, without violating the conditions which must now, since the rejection by the Legislature of the Church's Claim of Rights, be held to be the conditions of the Establishment :

And considering that, while heretofore as members of Church Judicatories ratified by law, and recognised by the constitution of the kingdom, we held ourselves entitled and bound to exercise and maintain the jurisdiction vested in these Judicatories with the sanction of the constitution, notwithstanding the decrees as to matters spiritual and ecclesiastical of the Civil Courts, because we could not see that the State had required submission thereto as a condition of the Establishment ; but, on the contrary, were satisfied that the State, by the Acts of the Parliament of Scotland, for ever and unalterably secured to this nation by the Treaty of Union, had repudiated any power in the Civil Courts to pronounce such decrees, we are now constrained to acknowledge it to be the mind and will of the State, as recently declared, that such submission should and does form a condition of the Establishment, and of the possession of the benefits thereof, and that, as we cannot, without committing what we believe to be sin—in opposition to God's law—in disregard of the honour and authority of Christ's Crown, and in violation of our own solemn vows, comply with this condition, we

cannot in conscience continue connected with, and retain the benefits of an Establishment, to which such condition is attached.

We, therefore, the Ministers and Elders foresaid, on this, the first occasion since the rejection by the Legislature of the Church's Claim of Right, when the Commissioners chosen from throughout the bounds of the Church to the General Assembly appointed to have been this day holden, are convened together, do protest that the conditions foresaid, while we deem them contrary to, and subversive of, the settlement of Church government, effected at the Revolution, and solemnly guaranteed by the Act of Security and Treaty of Union, are also at variance with God's Word, in opposition to the doctrines and fundamental principles of the Church of Scotland, inconsistent with the freedom essential to the right constitution of a Church of Christ, and incompatible with the government which He, as the Head of His Church, hath therein appointed distinct from the Civil Magistrate.

And we further protest, that any Assembly constituted in submission to the conditions now declared to be law, and under the civil coercion which has been brought to bear on the election of Commissioners to the Assembly this day appointed to have been holden, and on the Commissioners chosen thereto, is not and shall not be deemed a lawful and free Assembly of the Church of Scotland, according to the original and fundamental principles thereof, and that the Claim, Declaration, and Protest of the General Assembly which convened at Edinburgh in May 1842, as the act of a free and lawful Assembly of the said Church, shall be holden as setting forth the true constitution of the said Church, and that the said Claim, along with the laws of the Church now subsisting, shall in nowise be affected by whatsoever acts and proceedings of any Assembly constituted under the conditions now declared to be the law, and in submission to the coercion now imposed on the Establishment.

And finally, while firmly asserting the right and duty of the Civil Magistrate to maintain and support an establishment of religion in accordance with God's Word, and reserving to ourselves and our successors to strive, by all lawful means, as opportunity shall in God's good providence be offered, to secure the performance of this duty agreeably to the Scriptures, and in implement of the Statutes of the kingdom of Scotland and the obligations of the Treaty of Union as understood by us and our Ancestors; but acknowledging that we do not hold ourselves at liberty to retain the benefits of the Establishment while we cannot comply with the conditions now to be deemed thereto attached: We protest, that, in the circumstances in which we are placed, it is and shall be lawful for us and such other commissioners chosen to the Assembly appointed to have been this day holden, as may concur with us, to withdraw to a separate place of meeting, for the purpose of taking steps for ourselves and all who adhere to us, maintaining with us the Confession of Faith and Standards of the Church of Scotland, as heretofore understood—for separating in an orderly way from the Establishment, and thereupon adopting such measures as may be competent to us, in humble dependence on God's grace and the aid of the Holy Spirit, for the advancement of His glory, the extension of the Gospel of our Lord and Saviour, and the administration of the affairs of Christ's House, according to His Holy Word; and we do now, for the purpose foresaid, withdraw

accordingly, humbly and solemnly acknowledging the hand of the Lord in the things which have come upon us, because of our manifold sins, and the sins of this Church and nation ; but at the same time with an assured conviction, that we are not responsible for any consequences that may follow from this our enforced separation from an Establishment which we loved and prized—through interference with conscience, the dishonour done to Christ's Crown, and the rejection of His sole and supreme authority as King in his Church.

THE END.



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Bryce, James, D.D.

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Ten Years of ^{his} Scotland
from 1833-1843.

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